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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

TOM FORESE, Chairman
BOB BURNS
ANDY TOBIN
BOYD DUNN
JUSTIN OLSON

IN THE MATTER OF:

STACEY CHAMPION, et al.,

Complainant,

v.

ARIZONA PUBLIC SERVICE COMPANY,
an Arizona Public Service Corporation,

Respondent.

DOCKET NO. E-01345A-18-0002

**ARIZONA PUBLIC SERVICE
COMPANY'S INITIAL CLOSING
BRIEF**

Arizona Corporation Commission

DOCKETED

OCT 26 2018

DOCKETED BY
9

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TABLE OF DEFINED TERMS

<u>ABBREVIATED TERM</u>	<u>FULL NAME/DESCRIPTION</u>
#	
2015 Test Year	APS's 2016 Rate Case historical test year
A	
A.A.C.	Arizona Administrative Code
ACC	Arizona Corporation Commission
ALJ	Administrative Law Judge
AMI	Automated Meters
APS	Arizona Public Service Company
APS's 2016 Rate Case	Application of Arizona Public Service Company for a Hearing to Determine the Fair Value of the Utility Property of the Company for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon, to Approve Rate Schedules Designed to Develop such Return E-01345A-16-0036 and E-01345A-16-0123 (consolidated)
A.R.S.	Arizona Revised Statutes
C	
Champion	Stacey Champion
Commission	Arizona Corporation Commission
Company	Arizona Public Service Company
D	
Decision	Decision No. 76295, issued August 18, 2017 in Docket Nos. E-01345A-16-0036 and E-01345A-16-0123 (consolidated)
DG	Distributed Generation
DSMAC	Demand Side Management Adjustment Charge
E	
EE	Energy Efficiency
Expert Report	Dr. Ahmad Faruqui's report attached to his Direct Testimony
F	
Faruqui	Ahmad Faruqui, Ph.D.
FERC	Federal Energy Regulatory Commission
FVROR	Fair Value Rate of Return
G	
Gayer	Richard Gayer
H	
Hobbick	Jessica E. Hobbick
L	
Liu	Yue "Nick" Liu

1	LFCR	Lost Fixed Cost Recovery Adjustment Mechanism
2	M	
3	Miessner	Charles A. Miessner
4	N	
5	New Rates	The new package of residential rates that non-grandfathered residential customers were transitioned to during the period of February 2018 through May 2018 under Decision No. 76295
6	P	
7	Padgaonkar	Abhay Padgaonkar
8	POA	Plan of Administration
9	R	
10	REAC	Renewable Energy Standard Adjustment Charge
11	Rebuttal Testimonies	Testimony filed in response to direct testimony
12	Revenue Requirement	The amount of money that a public utility must receive from its customers to cover its operating costs, interest paid on debt, taxes (if applicable) and earn a reasonable return (profit)
13	ROO	Recommended Opinion and Order
14	S	
15	SCR	Selective Catalytic Reduction Rate Rider
16	Settling Parties	All signatories to the Settlement Agreement attached as Exhibit A to Decision No. 76295
17	Settlement	Settlement Agreement attached as Exhibit A to Decision No. 76295
18	SFR	Standard Filing Requirements
19	Snook	Leland R. Snook
20	Staff	Utilities Division Staff of the Arizona Corporation Commission
21	Sweep	Transferred certain adjustor rates into base rates
22	SWEEP	Southwest Energy Efficiency Project
23	T	
24	TCA	Transmission Cost Adjustment
25	Test Year	Rate cases for all utilities are decided based on data for an historical test year
26	Tr.	Transcript
27	Transition Period	February 2018 through May 2018 under Decision No. 76295
28	Transition Rates	Rate schedules that were in effect prior to the Settlement, adjusted on a uniform basis to reflect the approved rate increase and the adjustor revenue transfers to base rates
	V	
	Vol.	Volume
	W	
	Woodward	Warren Woodward

1 **I. INTRODUCTION¹**

2 Stacey Champion filed a complaint under A.R.S. § 40-246, alleging that the rates
3 established in the Decision² are unreasonable because the average bill impact on
4 residential customers was purportedly greater than the 4.54% approved by the
5 Commission. The complaint was accompanied by a petition signed by at least 25
6 customers. Ms. Champion has asked the Commission to take the unprecedented step of
7 reopening APS's 2016 Rate Case to conduct a "full-scale rate hearing." The
8 Commission should reject Ms. Champion's requests.

9 Throughout her challenge to existing rates, Ms. Champion has ignored that
10 Arizona law prohibits collateral attacks on a Commission rate decision and the
11 retroactive relief she seeks. Ms. Champion gives no credence to the fact that: (1) in
12 Arizona, rate cases for all utilities are decided based upon data for an historical test year;
13 (2) the "impact" determined in rate case decisions is the average increase in revenue for
14 that test year, net of revenue-neutral adjusters; and (3) projections made in rate cases are
15 based on historical test year data. Notably, the Decision could only address the 2015
16 Test Year and set rates based upon data derived from that Test Year. Even Ms.
17 Champion's witness admitted that if the 4.54% impact identified in the Decision is an
18 accurate average, Ms. Champion's complaint must fail.³

19 There is no factual or legal basis for the Commission to find in favor of Ms.
20 Champion. The evidence demonstrates that APS has complied with the terms of the
21 Decision. Staff's own independent analysis confirms APS's compliance with the
22

23 ¹ Unless otherwise indicated, this brief cites the record in this matter as
24 reflected in the Commission's public docket for E-01354A-18-0002:
25 <http://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=19348>. Citations to other
26 Commission dockets are cited similarly, and will include their docket numbers.

26 ² APS 2016 Rate Case, Ariz. C.C. Docket Nos. E-01345A-16-0036 and E-01345A-
16-0123 (consolidated), Decision No. 76295 (Aug. 18, 2017).

27 ³ Tr. Vol. I (Sept. 25, 2018) at 182-83.

1 Decision, both in this matter and in other post-Decision proceedings.⁴ A.R.S. § 40-246
2 does not provide for re-adjudication of prior rate decisions based on claims of
3 subsequent rate impacts. Utilities bear the risk of under earning if their projections
4 prove wrong, and the Commission has prospective remedies if a company ultimately
5 earns in excess of its authorized rate of return (of which there is no evidence here).

6 Ms. Champion's case is based on a flawed analysis of post-Decision purported
7 customer impacts. As APS has conclusively demonstrated, Ms. Champion's allegations
8 concerning customer impacts were distorted. For example, APS pointed out that Ms.
9 Champion's own bill would have been consistent with the projected impact if she had
10 selected her best rate.⁵ Notably, Ms. Champion did not provide any personal testimony
11 in her own case and did not dispute APS's analysis of her bill.

12 Ms. Champion's case was based on unfounded allegations. Indeed, she failed to
13 present evidence of overearning by APS. Although Ms. Champion criticized APS for
14 not adequately advising residential customers of bill impacts under the Decision, the
15 undisputed evidence demonstrates APS's implementation of ongoing extensive
16 education is unparalleled nationally.⁶

17 In the end, Ms. Champion's attempt to invalidate the Decision is not only
18 unsupported by the evidence, it is contrary to the public interest. The Decision provided
19 for the implementation of a gradual transition to modern, cost-based rates that promote
20

21 ⁴ See generally Staff Report, Utilities Division (Sept. 26, 2018). The Decision
22 deferred consideration of APS's recovery of costs for the installation of Selective
23 Catalytic Reduction equipment until recently. A hearing on the recovery of SCR costs
24 was conducted from September 5-7, 2018, and is currently awaiting a recommended
25 opinion and order. In the SCR proceedings, Staff also confirmed APS's compliance
with the Decision. See APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-
01345A-16-0123 (consolidated), Brief, Utilities Division (Sept. 24, 2018) at 8-9 (citing
the testimony of Staff witness Ralph Smith and others).

26 ⁵ Champion's best rate did not require any modification of her behavior or energy
usage, yet she still rejected same. Tr. Vol. IV (Sept. 28, 2018) at 647.

27 ⁶ E.g., Tr. Vol. V (Oct. 1, 2018) at 860-61.
28

1 energy efficient behavior. Ms. Champion would have this Commission undo the
2 preservation of customer choice established in the Decision, choice that ultimately
3 dictates, in large part, the impact on customer bills. Moving customers to their best rates
4 and helping customers understand the new energy-efficient rate plans is best
5 accomplished through ongoing customer education, which APS is already doing.⁷ Ms.
6 Champion also would have the Commission eradicate its Decision less than one year
7 after its issuance based on only four months of data, when the evidence is clear that
8 comprehensive, necessary modernization of APS's rates requires time for customers to
9 migrate to such new rate plans, which, in fact, they are.⁸

10 As set forth herein, there is no factual basis for Ms. Champion's complaint. APS
11 properly projected the average residential bill impact of the Decision. APS is involved
12 in an ongoing customer education program. Moreover, there is no legal basis for the
13 relief that Ms. Champion has requested. The complaint should be denied.

14 **II. AS A COMPLAINANT CHALLENGING THE REASONABLENESS OF**
15 **EXISTING RATES, MS. CHAMPION BORE THE BURDEN OF**
16 **PROVING HER CLAIMS BY CLEAR AND CONVINCING EVIDENCE.**

17 Ms. Champion filed her complaint under A.R.S. § 40-246.⁹ The ALJ confirmed
18 that Ms. Champion's allegations should be heard as a complaint under A.R.S. § 40-246,
19 as opposed to some other type of proceeding, such as a request to rehear APS's last rate
20 case.¹⁰

23 ⁷ See Response to Commissioner Dunn filed simultaneously herewith.

24 ⁸ See APS Residential Bill Impacts May – August 2018 filed simultaneously
25 herewith.

26 ⁹ Application – Formal Complaint, Stacey Champion (Jan. 3, 2018); Response to
27 Motion/Reply to Response to Motion, Stacey Champion (Feb. 13, 2018) at 2-4.

28 ¹⁰ APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-01345A-16-0123
(consolidated), Hearing Division Memorandum, Jane L. Rodda (Jan. 5, 2018).

1 Ms. Champion concedes that she must bear the burden of proof.¹¹ The parties
2 disagree, however, on the applicable standard of proof. Ms. Champion has erroneously
3 claimed that she need only present “sufficient evidence to warrant a full-scale rate
4 hearing,” without explaining what “sufficiency” means.¹² “Sufficient” evidence is a
5 term equally applied under different standards of proof, including the clear and
6 convincing evidence standard.¹³ In this case, Ms. Champion should be required to prove
7 her claims by “clear and convincing” evidence.¹⁴

8 The clear and convincing evidentiary standard is appropriate for several reasons.
9 By her own admission and consistent with A.R.S. § 40-246, Ms. Champion filed her
10 complaint to dispute the “reasonableness” of existing rates, stating that her complaint:

11 . . . concerns the reasonableness of the rates and charges
12 adopted in the Settlement Agreement and approved by
13 Decision No. [76295]. As evidence that these rates are not
14 reasonable, Ms. Champion proposes to show the actual
15 average bill impact experienced by residential customers
under the rates approved by Decision No. 76295 is
significantly greater than the 4.54% projection.¹⁵

16 The rates that Ms. Champion challenges, however, were previously examined and found
17 by the Commission to be both just and reasonable in the Decision. Ms. Champion did
18 not intervene or seek to intervene in that docket. In other words, Ms. Champion has
19 blatantly mounted a collateral attack on a final Commission ratemaking decision.

20 Moreover, Arizona law imposes a stringent standard on the review of
21 Commission ratemaking decisions. APS maintains that to the extent Ms. Champion

23 ¹¹ A.A.C. R14-3-109(G). *See also* Response, Stacey Champion (Mar. 21, 2018)
24 at 4.

25 ¹² Response, Stacey Champion (Mar. 21, 2018) at 4.

26 ¹³ *See Stevenson v. Stevenson*, 132 Ariz. 44, 46 (1982); *Groth v. Martel*, 126 Ariz.
102, 103 (App. 1980).

27 ¹⁴ *See* Tr. Vol. I (Sept. 25, 2018) at 72.

28 ¹⁵ Response, Stacey Champion (Mar. 21, 2018) at 2.

1 seeks any change to the Decision itself, her action is barred as a collateral attack.¹⁶
2 Nevertheless, if Ms. Champion is permitted to challenge the Decision in some fashion,
3 it, like all other ratemaking decisions, is presumed lawful and should be upheld, absent a
4 showing that the Decision is arbitrary, an abuse of discretion, or unsupported by
5 **substantial** evidence.¹⁷ This standard is the equivalent of the “clear and convincing
6 evidence” standard under Arizona law.¹⁸ It would contort due process if a party to a rate
7 case was held to a clear and convincing standard in an appeal of that case, but a non-
8 party could maintain a successful collateral challenge to that same rate-case decision by
9 meeting a lesser standard after the fact. Indeed, even an intervenor in a rate case can
10 only maintain a successful challenge to the prudence of utility investments by meeting a
11 clear and convincing standard.

12 The Commission typically does not identify any standard of proof under A.R.S.
13 § 40-246.¹⁹ It should be noted that the few individual “customer complaints” that have
14 applied a preponderance of evidence standard proof are wholly distinguishable from this
15 case.²⁰ Those cases did not challenge the reasonableness of rates established in a

16
17 ¹⁶ See A.R.S. § 40-252 (“In all collateral actions or proceedings, the orders and
decisions of the commission which have become final shall be conclusive.”).

18 ¹⁷ *Residential Util. Consumer Office v. Ariz. Corp. Comm’n*, 240 Ariz. 108, 111,
19 ¶ 10 (2016); *Freeport Minerals Corp. v. Ariz. Corp. Comm’n*, 244 Ariz. 409, 411, ¶ 6
(App. 2018). Accord A.R.S. § 40-254.01(A), (E). The same standard applies to review
20 of Commission decisions under A.R.S. § 40-254(A) and (E). *Tucson Elec. Power Co. v.*
Ariz. Corp. Comm’n, 132 Ariz. 240, 243 (1982); *Ariz. Water Co. v. Ariz. Corp. Comm’n*,
217 Ariz. 652, 655-56, ¶ 10 (App. 2008).

21 ¹⁸ *Litchfield Park Serv. Co. v. Ariz. Corp. Comm’n*, 178 Ariz. 431, 434, (App.
22 1994); *Consol. Water Utils., Ltd. v. Ariz. Corp. Comm’n*, 178 Ariz. 478, 481 (App.
1993).

23 ¹⁹ See, e.g., *Lori S. Daniels v. Qwest Corp.*, 2015 WL 5178948 (Ariz. C.C. Aug. 26,
24 2015); *Rattlesnake Pass, L.L.C. v. Tucson Elec. Power Co.*, 2012 WL 5210780 (Ariz.
C.C. Oct. 17, 2012) (trespass); *Charles J. Dains v. Rigby Water Co.*, 2011 WL 1367458
(Ariz. C.C. Apr. 7, 2011) (extension agreement dispute); *Lydia Tsosie v. Ariz. Pub.*
25 *Service Co.*, 2009 WL 3722681 (Ariz. C.C. Oct. 30, 2009) (meter charge dispute).

26 ²⁰ See, e.g., *Jeff Herbst v. Narvol D. Bales d/b/a Sunizona Water Co.*, 2018 WL
4600833 (Ariz. C.C. Sept. 20, 2018) (customer billing dispute); *In the Matter of*
27 *Carefree 34, Inc./Office on Easy St., Inc. DBA Venues Cafe, Complainant*, 2015 WL
1906636 (Ariz. C.C. Apr. 23, 2015). (rate discrimination); *Albert L. Smith v. Beaver*

1 Commission decision, much less ask the Commission to overturn a prior rate case
2 decision as Ms. Champion does here. The service quality complaints or disputes over
3 the termination of a customer's individual service for nonpayment substantively and
4 legally differ from the reversal of a constitutionally-based determination by the
5 Commission of just and reasonable rates.

6 The Decision challenged here is the result of an extensive proceeding that
7 included approximately 40 parties, involved substantial discovery and analyses, and
8 addressed multi-faceted issues in a specialized area of law. In issuing the Decision, the
9 Commission was constitutionally required to balance utilities' and customers' interests
10 for a comprehensive public good. As discussed in Section V.C.3 *infra*, the Settlement
11 Agreement, as amended and approved by the Commission in the Decision, achieved this
12 balance, and represents an equitable compromise between 29 parties that secured
13 substantial benefits for APS customers and Arizona as a whole, benefits that Ms.
14 Champion would eliminate if she is successful in her claim. Such an unprecedented
15 unraveling of a settlement and rate case decision should not be lightly undertaken, and
16 Ms. Champion must be held to a clear and convincing evidentiary standard before
17 consideration of such a drastic action.

18 Applying the preponderance of the evidence standard in cases like this one would
19 render A.R.S. § 40-254.01 meaningless. As Ms. Champion did here, a complainant
20 could wait until after the time for appeal has run and challenge established rates to
21 obtain their possible (and more probable) reversal under a more lenient standard. The
22 Commission must interpret related statutes, specifically A.R.S. § 40-254.01 and § 40-
23 246, consistently with each other, giving effect to both.²¹ The imposition of a clear and
24

25 *Valley Water Co.*, 2013 WL 3972712 (Ariz. C.C. July 30, 2013) (customer billing
26 dispute).

27 ²¹ *Ariz. Water Co. v. Ariz. Dep't of Water Resources, et al.*, 208 Ariz. 147, 153-54,
28 ¶¶ 26-29 (2004); *Clark v. Clark*, 239 Ariz. 281, 283, ¶ 9 (App. 2016).

1 convincing standard harmonizes the statutes and avoids the application of conflicting
2 legal standards to challenges of existing rates.

3 Thus, Ms. Champion appropriately bears the higher standard of proof: to prove
4 her claims by clear and convincing evidence when seeking to have the Commission
5 effectively vacate the rate design and existing residential rates previously approved in
6 the Decision. As set forth more fully herein, Ms. Champion has not met that burden and
7 her complaint should be dismissed.²²

8 **III. APS CORRECTLY IMPLEMENTED THE DECISION AND MS.**
9 **CHAMPION PRESENTED NO EVIDENCE OTHERWISE.**

10 **A. APS Followed Commission Precedent and Industry-Wide Practices in**
11 **Designing the Residential Base Rates Attached to and Approved by**
12 **the Decision.**

13 APS witness Leland Snook explained in detail how APS took the revenue
14 requirement from the Settlement Agreement, which was based upon a historical 2015
15 Test Year, and designed rates that would yield that revenue requirement based on billing
16 determinants from that same 2015 Test Year.²³ Mr. Snook also testified, based on his
17 many years of experience (including some eight prior rate reviews for Tucson Electric
18 Power Company or APS), that this was how rates had been designed in prior rate
19 reviews for APS and other Arizona utilities.²⁴

20 The rates were widely distributed to all interested persons for review, and were
21 available as a matter of public record. The rates were attached to the Settlement
22 Agreement as Appendix F, and later attached to the Decision. APS also submitted the
23 rates, including updated schedules for the adjustor mechanisms, as a compliance filing in

24 ²² The record should reflect that APS further asserts Ms. Champion's evidence does
25 not meet even the "preponderance" standard.

26 ²³ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct
27 Testimony of Leland Snook at 2-4.

28 ²⁴ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct
Testimony of Leland Snook at 6. *See also* Tr. Vol. IV (Sept. 28, 2018) at 752-53.

1 the Rate Case docket for Staff's review and validation before any of such rates took
2 effect.²⁵

3 Finally, Mr. Snook testified as to the steps taken by APS to assure itself and the
4 Commission that the approved rates were in fact the rates charged to APS customers.
5 These steps included an independent audit by Deloitte, as well as an internal review of
6 randomly-selected bills, verified to confirm their correct calculation.²⁶

7 APS witness Dr. Ahmad Faruqui, an internationally recognized utility rate expert
8 from the Brattle Group, with some 40 years of experience, confirmed that APS's
9 practices in designing rates to meet the Decision's specified revenue requirements were
10 consistent with industry norms throughout the United States.²⁷ Dr. Faruqui also
11 substantiated that the rates designed by APS would collect the revenue assigned to each
12 class of APS customers.²⁸

13 Intervenor Warren Woodward has argued that APS's ratemaking process is not at
14 issue and any discussion of the process by which APS designs rates "is also
15 worthless."²⁹ APS disagrees. Having a reasonable and rational process in setting utility
16 rates is important in and of itself; moreover, it enhances greatly the likelihood of a
17 reasonable and rational result.³⁰

18 **B. The 4.54% Accurately Represents the Average Annual Increase for**
19 **Residential Rates, Taking into Effect the Transfer of Test Year**
20 **Revenue Requirements from Certain Adjustment Mechanisms**

21 ²⁵ Tr. Vol. III (Sept. 27, 2018) at 595. *See also* Staff Report, Utilities Division
22 (Sept. 26, 2018) at 5.

23 ²⁶ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct
Testimony of Leland Snook at 5.

24 ²⁷ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct
Testimony of Dr. Ahmad Faruqui at 3 & Attachment AJF-2DR at 5.

25 ²⁸ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct
Testimony of Dr. Ahmad Faruqui at 3 & Attachment AJF-2DR at 5.

26 ²⁹ Pre-filed Testimony (Rebuttal), Warren Woodward (Aug. 16, 2018) at 3.

27 ³⁰ Tr. Vol. IV (Sept. 28, 2018) at 758.

(Identified in Section VIII of the Settlement Agreement), Consistent with Commission Precedent, Requirements, and Practice.

1. There is a general agreement that the increase in residential rates before recognizing the effects of the adjustor transfer was approximately 15.9%.

As a preliminary matter, it is significant that there was general agreement about the increase prior to any recognition of the adjustor transfer. Intervenor Richard Gayer and APS both calculated that increase to be 15.9%.³¹ Champion witness Abhay Padgaonkar used a smaller sample of customers from the 2015 Test Year, but his calculated increase of 15.68% was comparable to that of Mr. Gayer and APS.³² Mr. Woodward offered no evidence on this issue.

2. APS and Staff witnesses explained and confirmed the 4.54%.

a) **Dr. Ahmad Faruqui**

APS witness Dr. Ahmad Faruqui used Ms. Champion's own analysis of her bills as an illustrative example. Each method of examining this issue produced results consistent with the 4.54% reflected in the Settlement within the expected margin of error. Dr. Faruqui presented an analysis of Ms. Champion's bills starting with the 8.1% increase claimed in her complaint.³³ He then made a series of five necessary adjustments to her figures that he explains at pages 12-14 of his Expert Report.³⁴ Dr. Faruqui's results are presented in his chart at page 14 of the Expert Report (set forth

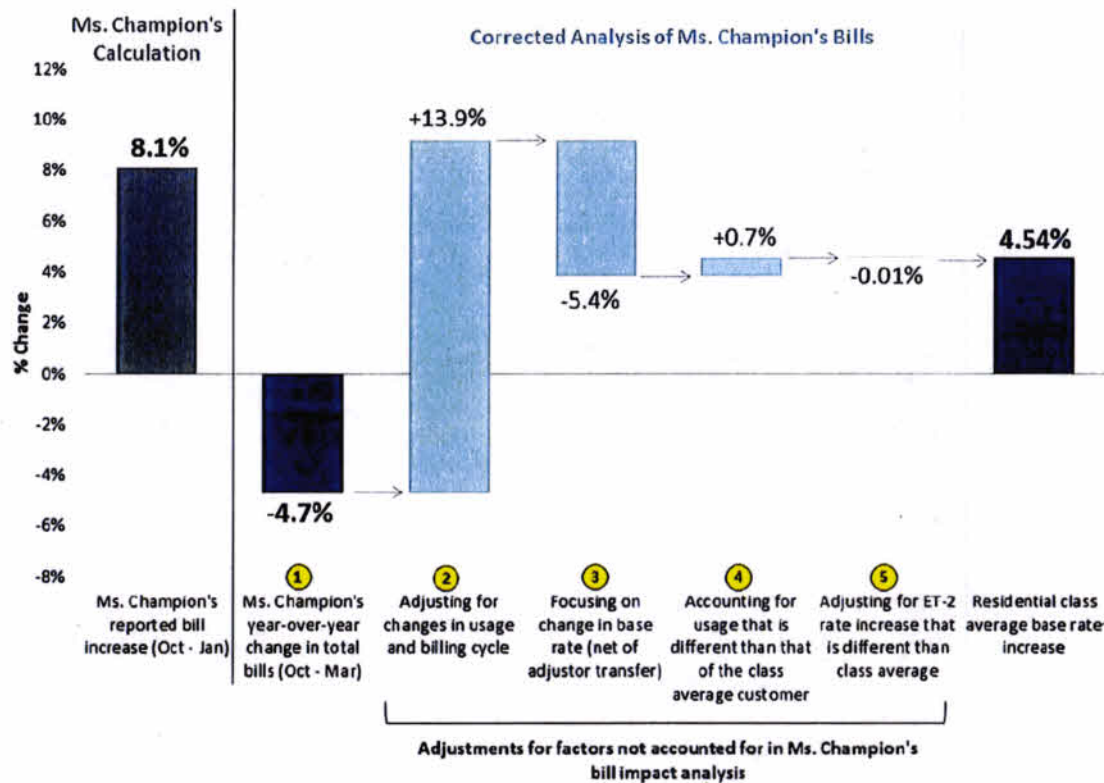
³¹ Tr. Vol. III (Sept. 27, 2018) at 440-42; Tr. Vol III (Sept. 27, 2018) at 442; Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct Testimony of Dr. Ahmad Faruqui Attachment AJF-2DR at 8, Table 1; Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal Testimony of Charles Miessner at 2.

³² Pre-filed Testimony, Stacey Champion (July 31, 2018), Direct Testimony of Abhay Padgaonkar at 11, 20.

³³ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct Testimony of Dr. Ahmad Faruqui, Attachment AJF-2DR at 11.

³⁴ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct Testimony of Dr. Ahmad Faruqui, Attachment AJF-2DR at 12-15.

Figure 1: Factors explaining the difference between Ms. Champion's bill change and the 4.54% base rate increased approved by the ACC



above).³⁵ As the chart demonstrates, after accounting for differences between Ms. Champion and the composite "average" residential customer, as well as bill changes unrelated to the Decision, Dr. Faruqui was able to reconcile Ms. Champion's bills with the 4.54% average annual increase noted in the Settlement. Champion witness Mr. Padgaonkar's Rebuttal Testimony, as well as the Rebuttal Testimonies of Messrs. Woodward and Gayer, are full of personal attacks on Dr. Faruqui, but nowhere did they refute his analysis.

³⁵ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct Testimony of Dr. Ahmad Faruqui, Attachment AJF-2DR at 14.

b) Ms. Jessica Hobbick

APS witness Jessica Hobbick presented a “bottoms up” analysis of Test Year billing results by rebilling all 951,043 customers for which APS had a full Test Year of interval billing data.³⁶ The result after consideration of the transfer of Test Year adjustor revenues (as described in Section VIII of the Settlement Agreement) was an average annual residential increase of 4.1%, which is consistent with, but slightly lower than, the 4.54% authorized net increase in base rates.³⁷

Ms. Hobbick further testified that the “New Rates” were designed to produce the same overall revenue as the Transition Rates, which was the revenue allocation to the residential class agreed to in the Settlement and approved by the Decision.³⁸ A rebilling performed by Ms. Hobbick using the New Rates also produced an annual average rate increase of 4.1%, although the diversity of results was greater, with nearly a quarter of all residential customers realizing a rate decrease.³⁹ That the New Rates could produce more disparate results for individual residential customers was fully contemplated by the Settling Parties from the very beginning.⁴⁰ Whether these results actually occur will depend on post-Decision events (*e.g.*, customer rate selection, customer usage, etc.), showing that customer choice could not be assumed away as in prior rate cases. APS’s primary rate design goal in the rate review proceeding was to modernize its rate design and significantly reduce the subsidies within the residential class that had accumulated

³⁶ The full Test Year billing determinants include partial year customers and customers for which no interval data exists or the data is incomplete. The latter group exists for a variety of reasons including non-AMI metering.

³⁷ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct Testimony of Jessica Hobbick at 4 & Attachment JEH-1DR.

³⁸ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct Testimony of Jessica Hobbick at 5.

³⁹ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct Testimony of Jessica Hobbick at 5.

⁴⁰ See APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-01345A-16-0123 (consolidated), APS Ex. 30.

1 over more than three decades of essentially “across the board” rate adjustments.⁴¹ To do
2 so, the Settling Parties agreed to redesign rates to better align cost responsibility with
3 cost causation.⁴² During the evidentiary hearing on the Settlement Agreement that
4 resulted in the Decision, APS introduced two exhibits, which it also presented in this
5 docket as APS Exhibits 17 and 18.⁴³ These Exhibits showed that a wide range of
6 potential results could occur as a result of the rate designs proposed by the Settlement.

7 In addition to rate design considerations, the New Rates involved an important
8 element of customer choice. The customer-choice factor played a significant role even
9 during the implementation of the Transition Rates, and was a factor before the Decision
10 (APS residential customers had multiple rate options before the Decision as well as
11 during the Transition Period). Generally, the role of customer choice is not considered
12 in the Commission’s ratemaking rules. Instead, the rate design projection is that
13 customers will remain on the rate they had during the Test Year, and that new customers
14 will select rate options similar to those of existing customers. With the New Rates, APS
15 made new projections about rate selection, while noting that customer rate optimization
16 was an ongoing process.⁴⁴ Dr. Faruqui confirmed the same, stating that rate
17 optimization may take several years.⁴⁵

20 ⁴¹ Tr. Vol. III (Sept. 27, 2018) at 490, 596-97; Tr. Vol. V (Oct. 1, 2018) at 831-32,
21 859.

22 ⁴² Tr. Vol. III (Sept. 27, 2018) at 490; Tr. Vol. IV (Sept. 28, 2018) at 724; Tr. Vol.
23 V (Oct. 1, 2018) at 817.

24 ⁴³ Compare Tr. Vol. IV (Sept. 28, 2018) at 668 (admitting Ex. APS-17 & Ex. APS-
25 18) with APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-01345A-16-0123
26 (consolidated), APS Ex. 30 & 31.

27 ⁴⁴ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct
28 Testimony of Jessica Hobbick at 1, 11; Pre-filed Testimony, Arizona Public Service
Company (Aug. 17, 2018), Rebuttal Testimony of Jessica Hobbick at 2-3; Tr. Vol. IV
(Sept. 28, 2018) at 650, 659, 757.

⁴⁵ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal
Testimony of Dr. Ahmad Faruqui at 7-8; Tr. Vol. II (Sept. 26, 2018) at 331-32.

c) **Mr. Charles Miessner**

APS witness Charles Miessner, an expert in designing and implementing utility rates,⁴⁶ presented a “top down” analysis after, as discussed previously, Messrs. Padgaonkar and Gayer had validated the base rate increase calculation of 15.9%.⁴⁷ Consequently it appeared that the focus of the remaining dispute was the magnitude, and to a lesser extent, the timing of the adjustor revenue transfer.

Mr. Miessner examined the adjustor transfer in two different ways. First, he looked at the transfer in the aggregate. That involved comparing the total adjustor revenues to be transferred from the seven adjustors referenced in Section VIII of the Settlement Agreement to the Test Year base revenues for the residential class. This produced the 11.36% offset. When subtracted from the aforementioned 15.9%, this resulted in an average annual net increase of 4.54% as set forth in the Settlement and the Decision.⁴⁸ Mr. Miessner then took a disaggregated approach. He went through each of the seven adjustment mechanisms and computed what the mechanisms would have been absent the transfer of adjustor revenue requirements agreed to in the Settlement and approved by the Decision.⁴⁹ He then applied these alternative adjustor rates, with and without the transfer, to the average residential bill which resulted in a bill reduction of 11.20%.⁵⁰ If this slightly lower number were used by Mr. Miessner, it would have increased the average annual residential net increase to 4.7% (15.90%-11.20% = 4.70%).

⁴⁶ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal Testimony of Charles Miessner at 1.

⁴⁷ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal Testimony of Leland Snook at 5-6 & Rebuttal Testimony of Charles Miessner at 7-10, 14; Pre-filed Testimony, Richard Gayer (July 25, 2018) at 2, 6; Staff Report, Utilities Division (Sept. 26, 2018) at 4.

⁴⁸ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal Testimony of Charles Miessner at 7-8, 14.

⁴⁹ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal Testimony of Charles Miessner at 15-18, Table 8.

⁵⁰ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal Testimony of Charles Miessner at 15-18. The slight difference could be attributable to the change in the LFCR from a percent of bill charge pre-Decision to a cent per

d) Mr. Yue Liu

Staff witness Yue Liu, who had no participation in either the Settlement negotiations or the evidentiary proceeding resulting in the Decision,⁵¹ used a combination of the analyses of Mr. Miessner and Mr. Padgaonkar. Staff focused on the Transition Rate analysis because Staff found that the New Rates involved customer choice to such a large degree. Staff was also concerned that the effect of the New Rates was necessarily dependent upon the customers' response to the New Rates, with choice and response both being works in progress at present.⁵²

Mr. Liu validated the adjustor transfer analysis conducted by Mr. Miessner and concluded that the 11.20% was a reasonable estimate of the impact of the adjustor transfer. Using Mr. Padgaonkar's estimate of the increase, 15.68%, and the 11.20% offset for the adjustor transfer from Mr. Miessner's analysis (with which Staff agreed), Staff concluded the average annual increase for APS residential customers was 4.48%.⁵³

The legitimacy of Staff's concern about the lack of data concerning customer reaction in Mr. Padgaonkar's analyses of the New Rates was highlighted by APS witness Ms. Hobbick's examination of the six customers from her Attachment JEH-DR1, which appeared to have the most extreme outlier bill impacts. Her review of these six accounts for the period following their transition to the New Rates showed much more moderate impacts from these Rates.⁵⁴

Furthermore, and at the request of Commissioner Tobin, APS analyzed the same customer population as was used in Attachment JEH-DR1 for the four months since full

kWh/kW charge post and/or the REST "cap," which can only be estimated in the "no transfer" scenario.

⁵¹ Tr. Vol. V (Oct. 1, 2018) at 869.

⁵² Staff Report, Utilities Division (Sept. 26, 2018) at 4.

⁵³ Staff Report, Utilities Division (Sept. 26, 2018) at 5-6.

⁵⁴ Tr. Vol. IV (Sept. 28, 2018) at 666-67.

1 transition to the New Rates (May 2017 through August 2018). APS has presented this
2 analysis in a separate filing concurrent with this Initial Closing Brief and incorporates
3 that analysis herein. Although a four month analysis of 2018 data is not directly
4 comparable to 12 months of 2015 Test Year data, the facts are that after adjusting for
5 kWh usage differences and the number of billing days, residential customer bills on
6 average received an increase of 0.3% for the four summer months relative to the pre-
7 Decision rates, which is considerably lower than APS's 2016 Rate Case projection.⁵⁵
8 True, part of this difference is due to the Decision's increase in rates for non-summer
9 months as compared to the increase for summer rates. However, another reason for this
10 lower impact appears to be positive customer response to the new time-of-use period—a
11 reaction not factored into Attachment JEH-1DR.⁵⁶

12 APS has summarized the conclusions of its and Staff's witnesses in the Figure
13 below. Each witness concluded that the average annual increase in residential rates was
14 between 4 and 5%.

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25 ⁵⁵ See APS Residential Bill Impacts May-August 2018, filed simultaneously
26 herewith.

27 ⁵⁶ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal
28 Testimony of Jessica Hobbick at 4-5.

Figure 2

Summary of Conclusions by APS and Staff witnesses as to Average Annual Residential Rate Increase

Witness	% Increase
Dr. Faruqui (APS)	4.54%
Ms. Hobbick (APS)	4.1% (Transition Rate) 4.1% (New Rate)
Mr. Miessner (APS)	4.54% - 4.7%
Mr. Liu (Staff)	4.48%

3. The 4.54% was consistent with Commission requirements for rate cases.

For over 35 years, rate review applications by utilities like APS have been governed by the SFRs set forth at A.A.C. R14-2-103. Both Schedule A-1 and the so-called “H” Schedules (Effect of Proposed Rate Schedules) of these SFRs dictate how base rate increases are to be calculated and represented. In A-1 of APS’s original filing in the rate review proceeding, the average annual increase for residential customers was shown as 7.96%.⁵⁷ Importantly, APS’s 7.96% figure did not include or reference changes to adjustor rates after the Test Year, just as the Standard A-1 filing requirement contemplates. The Commission Staff reviewed the Company’s filing and issued a “Sufficiency Letter” finding the application in compliance with the SFRs.⁵⁸ And, the 4.54% was calculated in every respect the same way as the original 7.76%, allowing of course for the lower revenue requirement agreed to in the Settlement and approved by the Decision.⁵⁹ Just as the A-1 SFR and APS’s original 7.96% did not include adjustor

⁵⁷ Tr. Vol. III (Sept. 27, 2018) at 495-96 (admitting Ex. APS-11).

⁵⁸ Tr. Vol. III (Sept. 27, 2018) at 497 (admitting Ex. APS-12).

⁵⁹ Tr. Vol. III (Sept. 27, 2018) at 496; Tr. Vol. IV (Sept. 28, 2018) at 761.

1 changes that occurred after the Test Year, the 4.54% also excluded adjustor changes that
2 occurred after the Test Year.

3 If the Commission believes there should be different or improved ways of
4 calculating or representing base rate increases, APS would work with Commission Staff
5 to develop the improvements. For instance, the Commission may conclude that adjustor
6 changes occurring outside the rate case should be referenced or included in projected bill
7 impacts in future settlement agreements or rate case decisions. But there is nothing in
8 the record to indicate that the parties to the Settlement Agreement did anything other
9 than present a projected bill impact in the manner used and required by this
10 Commission.

11 **C. APS Correctly Transferred Certain Adjustor Revenues into Base**
12 **Rates (the Sweep).**

13 If the 4.54% is correct, then the adjustor transfer must have conformed to the
14 Settlement Agreement and the Decision.⁶⁰ That being said, APS would like to
15 emphasize two points made repeatedly during the hearing in this matter. First, the
16 adjustor transfer is revenue neutral to both the customer and the Company.⁶¹ The
17 revenue requirement that had been recovered by the seven adjustor mechanisms at issue
18 during the 2015 Test Year was transferred dollar-for-dollar to base rates.⁶² Second, even
19 if there were a lag in the reflection of a change in adjustor revenue requirements in
20 adjustor rates, or even if adjustor revenue requirements were reduced by less than the
21 amount agreed to in Section VIII of the Settlement Agreement (a hypothetical for which
22 there is zero credible evidence), APS could not gain so much as a dollar of additional

23 ⁶⁰ Tr., Vol. I (Sept. 25, 2018) at 182-83.

24 ⁶¹ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Direct
25 Testimony of Leland Snook at 4, Rebuttal Testimony of Charles Miessner at 2; Staff
Report, Utilities Division (Sept. 26, 2018) at 1.

26 ⁶² Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct
27 Testimony of Leland Snook at 9; Pre-filed Testimony, Arizona Public Service Company
(Aug. 17, 2018), Rebuttal Testimony of Charles Miessner at 5.

1 earnings.⁶³ This is because of the existence of a balancing account feature for each of
2 these adjustors. If there were more dollars remaining in the adjustor mechanism than
3 would have been anticipated post-transfer, or if there were a lag between the reduction
4 in adjustor revenue requirements and the change in adjustor rates, this would trigger a
5 relative increase in the amount owed APS customers (or a decrease in the amount owed
6 APS), plus interest, in the next reset of the adjustor(s). There is simply no way for APS
7 to somehow manipulate the adjustor transfer to its benefit.⁶⁴

8 Mr. Gayer's contentions that the adjustor transfer did not occur or that APS failed
9 to zero out each of the adjustors are simply misplaced. The evidence demonstrated that
10 APS properly transferred the amounts reflected in Schedule L of the Settlement
11 Agreement from the adjustor revenue requirements to base rate revenue requirements.⁶⁵

12 **D. Champion's Witness Did Not Understand and Wrongly Confused**
13 **Reductions Caused by the Sweep with Other Annual Adjustor Rate**
14 **Changes that Continued Outside Of and After the Rate Case.**

15 Like Mr. Gayer, it did not appear that Mr. Padgaonkar fully understood how APS
16 adjustor rates are set, when they are set, and the effect of a transfer of revenue
17 requirements from adjustors to base rates.⁶⁶ These apparent misunderstandings can be
18 grouped into three basic categories: commingling; timing; and adjustor changes after the
19 2015 Test Year but before the Decision.⁶⁷

21
22 ⁶³ Tr. Vol. III (Sept. 27, 2018) at 510-11 and 617; Tr. Vol. IV (Sept. 28, 2018) at
23 766-68.

24 ⁶⁴ Tr. Vol. IV (Sept. 28, 2018) at 753-54.

25 ⁶⁵ See generally Pre-filed Testimony, Arizona Public Service Company (Aug. 17,
26 2018), Rebuttal Testimony of Charles Miessner.

27 ⁶⁶ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal
28 Testimony of Leland Snook at 6-7 & Rebuttal Testimony of Charles Miessner at 9-11.

⁶⁷ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal
Testimony of Charles Miessner at 3.

1 1. Ms. Champion's lone witness was not qualified to opine on rate
2 design, rates, and related ratemaking issues in this case.

3 As a preliminary matter, APS objected to Ms. Champion's lone witness, Mr.
4 Padgaonkar, being offered as an expert.⁶⁸ During voir dire Mr. Padgaonkar admitted
5 that he had never testified as an expert witness on any subject and had no education or
6 experience whatsoever in ratemaking, rate design, and rate impacts.⁶⁹ In response, the
7 ALJ permitted Mr. Padgaonkar to testify with the caveat that he "may not be a
8 ratemaking rate design expert."⁷⁰

9 During the course of the hearing, Mr. Padgaonkar's repeated lack of familiarity
10 with important (and basic fundamental) aspects of ratemaking, adjustor mechanisms and
11 bill impacts removed any doubt that he was **not** an expert in these areas.⁷¹ Accordingly,
12 APS continues to object to the admission of Mr. Padgaonkar's direct and rebuttal
13 testimony to the extent that it is being offered as the opinions, findings and conclusions
14 of an expert in matters relating to ratemaking, rate design, adjustor mechanisms, and bill
15 impacts. Without waiving its objection, in the event that Mr. Padgaonkar's lay
16 testimony remains a part of the record in this docket, APS respectfully requests that its
17 evidentiary weight and probative value be discounted accordingly.

18 2. Commingling

19 Both the DSMAC and REAC had adjustor rate changes in August of 2017
20 resulting from proceedings that were separate and apart from the Rate Case. The
21 Commission approved these two adjustor changes as separate agenda items at the same
22 Open Meeting in which it approved the Settlement Agreement; the Commission's
23

24 ⁶⁸ Tr. Vol. I (Sept. 25, 2018) at 92-93.

25 ⁶⁹ Tr. Vol. I (Sept. 25, 2018) at 86-93.

26 ⁷⁰ Tr. Vol. I (Sept. 25, 2018) at 93.

27 ⁷¹ See, e.g., Tr. Vol. I (Sept. 25, 2018) at 158, 176; Tr. Vol. II (Sept. 26, 2018) at
28 196-199.

1 approvals of the adjustor changes and the Decision also took effect the same day.⁷² The
2 concurrent timing of these changes may be viewed as another separate and distinct
3 moving part, but the Settling Parties could not have contemplated that they would occur
4 at that precise time, much less the amount of each adjustor rate change that the
5 Commission would ultimately approve, when the Settling Parties signed the Settlement
6 Agreement in March 2018. Nor does the concurrent timing cause anything about these
7 adjuster changes to become inappropriate. Finally, because these concurrent adjustor
8 changes did not stem from the Settlement in any way, it would have been inaccurate to
9 include them in any representation of the effects of the Settlement Agreement or the
10 Decision.

11 3. Timing

12 The LFCR is different from all of the Company's other adjustment mechanisms
13 in that this adjustor's annual revenue requirement is recovered a year in arrears.⁷³ When
14 the LFCR revenue requirement increases (as it has every year prior to the transfer), the
15 LFCR rate does not reflect that increase until the following year.⁷⁴ The same is true
16 when the LFCR revenue requirement decreases as a result of the transfer – the rate effect
17 is delayed until the next reset of the LFCR.⁷⁵ Again, the LFCR adjustor is different from
18 all the other adjustors involved in the transfer, which had immediate adjustor rate
19 impacts.⁷⁶ In the interim, the change in revenue requirements (up or down) is captured

20 ⁷² See Decision. See also APS 2017 DSM Implementation Plan, Docket No. E-
21 01345A-16-0176, Decision No. 76312 (Aug. 24, 2017); APS 2017 RES Implementation
22 Plan, Docket No. E-01345A-16-0131, Decision No. 76313 (Aug. 24, 2017).

23 ⁷³ Tr. Vol. III (Sept. 27, 2018) at 506, 538, 615-16.

24 ⁷⁴ Tr. Vol. III (Sept. 27, 2018) at 506, 538.

25 ⁷⁵ APS filed an application on the date set forth in the POA for the LFCR, February
26 15, 2018, reflecting this lower revenue requirement, and it is pending before the
27 Commission. See APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-
28 01345A-16-0123 (consolidated), Application for Approval of Lost Fixed Cost Recovery
Mechanism (Feb. 15, 2018).

⁷⁶ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal
Testimony of Charles Miessner at 17, Table 8.

1 by this rate adjustor's balancing account, thus preventing any possible over- or under-
2 recovery of legitimate costs. This is how the POA works for this mechanism, and the
3 Settling Parties did not agree to any changes to the existing POA, excepting the change
4 in how the charge is assessed.⁷⁷

5 This does not mean that customers failed to benefit from the LFCR transfer
6 starting in August 2017. The annual LFCR revenue requirement—for which APS
7 customers would be responsible in the next LFCR reset—declined immediately by \$46
8 million per year.⁷⁸ This reduction is reflected in the Company's pending LFCR request,
9 filed on February 15, 2018, which provides an overall decrease in that adjustor.⁷⁹
10 Absent the transfer of revenue requirements in August of 2017, the pending LFCR
11 request would be for a substantial increase in that rate. In addition, the "rate" per kWh
12 by which APS measures its "Lost Fixed Costs" declined immediately for each kWh sale
13 "lost" to EE and DE (from \$.031111 per kWh to \$.025394 per kWh).⁸⁰ Thus the future
14 growth of the LFCR revenue requirement starting from this reduced post-transfer level
15 will be greatly slowed.

16 4. Events between the 2015 Test Year and the Decision

17 Mr. Padgaonkar's confusion is apparently attributable to his unfamiliarity with
18 the rate setting process. The adjustor primarily affected was the TCA. The amount in
19 Section VIII of the Settlement Agreement that was to be transferred from the TCA to
20 base rates was based on the respective amounts collected during the 2015 Test Year
21 from residential (\$90.6 million) and non-residential (\$38.2 million).⁸¹ That constituted
22

23 ⁷⁷ Tr. Vol. III (Sept. 27, 2018) at 615-16.

24 ⁷⁸ Tr. Vol. III (Sept. 27, 2018) at 537.

25 ⁷⁹ Tr., Vol. III (Sept. 27, 2018) at 551-53. *See also* 2016 Rate Case, Application for
Approval of Lost Fixed Cost Recovery Mechanism (Feb 15, 2018).

26 ⁸⁰ Tr., Vol. III (Sept. 27, 2018) at 506-07.

27 ⁸¹ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal
Testimony of Charles Miessner at 8.

1 6.09% of 2015 Test Year residential class base revenues.⁸² However, the allocation of
2 revenue requirement responsibility for the TCA changes each June 1st based on a filing
3 made with FERC on or before May 15th.⁸³ The June 1, 2017 TCA allocated a higher
4 percentage (61.43%) of the total transmission service revenue requirement to residential
5 customers than it did in the 2015 Test Year (58.95%). And so when the \$90.6 million
6 was transferred (credited) from the TCA residential revenue requirement to base rates,
7 the percentage impact was reduced to roughly 5.2% because the denominator (total
8 residential transmission revenue requirements) was larger, even though the dollars
9 transferred (the numerator) remained consistent with the Settlement.

10 APS provided extensive evidence establishing that its handling of the adjustor
11 transfers was proper and complied with the Settlement Agreement. Ms. Champion
12 simply failed to provide any evidence to the contrary.

13 **E. APS is Not Overearning.**

- 14 1. Ms. Champion's witness analyzed APS revenues after the Decision
15 and confirmed the Company's level of authorized increased
16 revenue.

17 Ms. Champion's witness Padgaonkar attempted to cobble together some SEC
18 filings by APS's parent company to "prove" that APS was receiving more than the level
19 of increased revenues contemplated by the Settlement Agreement and the Decision.
20 While no one would expect that rates based on a 2015 Test Year would produce
21 identical revenues in 2017-2018, Mr. Padgaonkar's calculation served to verify that
22 actual results are right in line with extrapolations of historical data from the 2015 Test

23 ⁸² Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal
Testimony of Charles Miessner at 8, Table 5; Tr. Vol. III (Sept. 27, 2018) at 499-503.

24 ⁸³ See Decision at Ex. A, Appendix Q. See also Letter Order Accepting Arizona
25 Public Service Company's Revised Formula Rate Protocols, Arizona Public Service
26 Company, Docket Nos. ER17-1099-000, et seq. (issued May 12, 2017); Letter Order
Accepting Arizona Public Service Company's Compliance Filing, Arizona Public
27 Service Company, Docket No. ER17-1099-002 (issued Jun. 30, 2017); Arizona Public
Service Company's Open Access Transmission Tariff at Attachment H-2 (Formula Rate
Implementation Protocols), available at <http://www.oasis.oati.com/azps/>.

1 Year.⁸⁴ Moreover, even if there were a divergence in revenues in 2017-2018 from the
2 2015 Test Year calculation not explained by changes in customers, usage, etc., this
3 would not mean APS was in any sense overearning. Revenues are not the same as
4 earnings.⁸⁵

5 By contrast to Mr. Padgaonkar, there is other ample evidence in this record that
6 APS is not overearning. That evidence is summarized in the excerpt from Staff's Brief
7 in the Four Corners SCR proceeding, which was essentially the second part of the rate
8 review and proceeding authorized by the Decision.⁸⁶

9 APS witness Blankenship also presented an exhibit showing
10 APS's projected earnings.⁸⁷ Ms. Blankenship's presentation
11 on her Exhibit EAB-3 and the presentation by APS witness
12 Snook demonstrate that APS is not earning in excess of its
13 authorized return (including the return equity). Staff witness
14 Smith stated that applying the FVROR of 5.59% specified in
15 the Settlement Agreement and Decision No. 76295 "ensures
16 that the operating income resulting from the adjustment does
17 not result in a return on rate base in excess of the FVROR
18 that was authorized in the Settlement Agreement and in
19 Decision No. 76295."⁸⁸

21 ⁸⁴ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal
22 Testimony of Leland Snook at 3-5.

23 ⁸⁵ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018) at
24 Rebuttal Testimony of Leland Snook at 4.

25 ⁸⁶ Tr. Vol. IV (Sept. 28, 2018) at 762-63.

26 ⁸⁷ See, e.g. APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-01345A-
27 16-0123 (consolidated), Application-Rates, Arizona Public Service Company (June 1,
28 2016), Direct Testimony of Elizabeth Blankenship, Ex. EAB-3 (containing APS
confidential information filed under seal).

⁸⁸ See APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-01345A-16-
0123 (consolidated), Brief, Utilities Division (Sept. 24, 2018) at 9.

1 **F. Arguments Asserted By Mr. Woodward And Mr. Gayer Are**
2 **Improper Collateral Attacks On The Decision And Otherwise Fail.**

3 1. Mr. Woodward Presented No Independent Supporting Evidence or
4 Authority.

5 APS has previously addressed the fact that disparate rate impacts were
6 anticipated and even intended. They were fully brought to the Commission's attention
7 prior to the Decision, and as noted by APS witnesses Ms. Hobbick and Dr. Faruqui, can
8 be ameliorated by customer responses to the New Rates, a response APS is already
9 seeing.⁸⁹ Mr. Woodward presented no evidence, nor cited any authority, for the
10 proposition that in the context of a rate review, all rates must be adjusted the same or
11 within some arbitrary band around the mean. Moreover, because Mr. Woodward's
12 arguments could have been raised previously by him as an intervenor in APS's Rate
13 Case, they constitute an impermissible collateral attack and should not be considered
14 here. *See* Sections V.A and V.B *infra*.

15 2. Mr. Gayer Failed to Account for the Adjustors Whatsoever.

16 Mr. Gayer's challenges to the Decision's rates reflect his fundamental
17 misunderstanding of ratemaking and how adjustor mechanisms work, among other
18 things. He repeatedly suggests, without reliable evidence, that the average rate increase
19 was in excess of fifteen percent. But as discussed by APS witnesses Mr. Snook, Mr.
20 Miessner, Ms. Hobbick, and Dr. Faruqui, Mr. Gayer's testimony and exhibits are replete
21 with errors and his work does not properly account for the adjustor Sweep or any
22 adjustor changes outside of the Rate Case. Mr. Gayer offers no credible evidence to
23 support his contentions that the average bill impact exceeds 4.54% or that the adjustor
24 Sweep did not occur. His claims should be denied on these grounds alone. In addition,
25 Mr. Gayer's claims should also be denied as a matter of law because he has not suffered

26 ⁸⁹ Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal
27 Testimony of Jessica Hobbick at 2-5 & Rebuttal Testimony of Dr. Ahmad Faruqui at 7-
28 8.

1 any damages and his claims, like those of Mr. Woodward, are an impermissible
2 collateral attack on the Decision because Mr. Gayer was an intervenor in that underlying
3 case (as discussed in Sections V.A and V.B *infra*).

4 **IV. APS IMPLEMENTED AND TRANSITIONED CUSTOMERS TO THEIR**
5 **NEW RATES GRADUALLY, AND CONDUCTED EXTENSIVE**
6 **CUSTOMER EDUCATION CONCERNING EACH CUSTOMER'S BEST**
7 **RATE.**

8 One of the cornerstones of the rate review and its Settlement Agreement was
9 “[b]ridging Arizona to a clean, sustainable energy future.”⁹⁰ In addition to a rate
10 increase, APS sought to “modernize [its] residential and small commercial rate design to
11 encourage new distributed technologies and begin to address the inequitable allocation
12 of revenue requirements caused by the current volumetric rate design and net energy
13 metering.”⁹¹ APS proposed to remedy the significant cost-shift caused by solar net
14 metering and revamp its residential rates by (i) sending better price signals to customers,
15 (ii) decreasing the cost-shift, and (iii) creating rates that would sustainably accommodate
16 new distributed technologies.⁹² APS’s rate review application requests that all
17 residential customers except for the very smallest users move to three-part rates with a
18 demand component, that the basic service charge be more cost-based, and that net
19 metering be eliminated for new customers with distributed technologies, such as solar.⁹³
20 To support these extensive changes, APS’s rate review application also proposed an

21 ⁹⁰ APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-01345A-16-0123
22 (consolidated), Application-Rates, Arizona Public Service Company (June 1, 2016),
Application at 2.

23 ⁹¹ APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-01345A-16-0123
24 (consolidated), Application-Rates, Arizona Public Service Company (June 1, 2016),
Application at 2.

25 ⁹² APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-01345A-16-0123
26 (consolidated), Application-Rates, Arizona Public Service Company (June 1, 2016),
Application at 2, 10.

27 ⁹³ APS 2016 Rate Case, Docket Nos. E-01345A-16-0036 and E-01345A-16-0123
28 (consolidated), Application-Rates, Arizona Public Service Company (June 1, 2016),
Application at 2, 10.

1 extensive plan to support its residential customers with education and outreach as they
2 moved to the New Rates.

3 APS's initial rate design proposal faced significant opposition from Commission
4 Staff and many intervenors. Through the Settlement process, however, a majority of the
5 parties were able to craft a workable compromise. That compromise made gradual
6 progress toward better aligning residential rates with costs by eliminating net metering,
7 eliminating inclining block rates, and balancing the ratio between on-peak and off-peak
8 rates, among other things. The result was an entire new suite of seven residential rates
9 that preserved customers' abilities to choose the type of rate they wished to be on and
10 importantly provided a six-to-nine month Transition Period for APS to provide
11 education and outreach about its New Rates.

12 The Settling Parties recognized that education and outreach were an important
13 part of this move to New Rates. The Settlement Agreement specifically required that
14 APS do the following:

- 15 • Provide customers with information on options that would minimize their
16 bills;⁹⁴
- 17 • Report to the ACC at least 90 days before transitioning customers to New
18 Rates indicating the total number of customers who have not made a rate
19 selection;⁹⁵
- 20 • Allocate and spend \$5 million in DSMAC funds "for education and to help
21 customers manage New Rates and rate options, including services and
22 tools available to customer to help them manage their utility costs;"⁹⁶ and
23

24
25 ⁹⁴ Decision at Ex. A ¶ 26.1.

26 ⁹⁵ Decision at Ex. A ¶ 26.1.

27 ⁹⁶ Decision at Ex. A ¶ 27.1.

- File an outreach and education plan and provide an opportunity for stakeholders to review and comment on the draft plan prior to filing.⁹⁷

In addition, the Commission added to APS's obligations under the Settlement Agreement, ordering:

- That the draft outreach and education plan "include a proposed form of notice for both customers who are on another rate and new customers that informs the customers of their rate options after May 1, 2018, accompanied by information on the estimated bill impact of switching to another rate."⁹⁸
- That, for applicable customers, the final notice be provided at least 3 billing cycles prior to May 1 or the date on which the new plans commence, whichever is later.⁹⁹
- That the draft outreach and education plan "include a form of notice to inform new ratepayers subject to the 90-day trial period of their rate options at the conclusion of the trial period, [including options about delivery] in order to provide [customers] with sufficient notice should they wish to begin taking service at that time on the R-Basic rate plan instead of a time- or demand-differentiated rate plan."¹⁰⁰

These mandates, collectively developed by the Commission and stakeholders, reflected a thoughtful understanding of the scope of rate changes made in this case and the importance of customer education. APS complied with each mandate, and an exhaustive compilation of APS's outreach and education activities is contained in its response to Commissioner Dunn's October 3, 2018 letter and is filed contemporaneously herewith (Dunn Response). APS incorporates that filing by reference, but discusses select education and outreach efforts below.

⁹⁷ Decision at Ex. A ¶ 27.1.

⁹⁸ Decision at 109.

⁹⁹ Decision at 109.

¹⁰⁰ Decision at 109.

1 **A. Best Rate Letters and Other Efforts**

2 In compliance with its obligation to provide customers with information about
3 their choices and their best rates, APS sent customers what has been referred to as their
4 best rate letter.¹⁰¹ By way of example, Ms. Hobbick explained the best rate letter sent to
5 Ms. Champion.

6 The letter to Ms. Champion explained the six main residential service plans,
7 including three flat rate options for customers of various usage sizes, one time-of-use
8 rate, and two demand rates. It also contained energy saving tips. To assist her with
9 transitioning to a New Rate plan, the letter noted that her best rate, the one which was
10 projected to be most economical to Ms. Champion based on her recent usage, was the
11 Saver Choice Max. Ms. Champion's most like rate, the one most similar to her then
12 existing rate plan, was Saver Choice. According to APS's projections, if Ms. Champion
13 moved to her best rate she would save about \$105 per year over her current plan. If she
14 moved to her most like rate she would likely pay approximately \$57 more per year. Ms.
15 Champion elected to remain on her most like rate despite receiving information that it
16 might not be her most economical rate.

17 Preserving a customer's ability to choose a rate plan that best fits their life was an
18 important tenet of the Settlement Agreement. And approximately 20% of APS's
19 customers proactively selected one of the New Rates prior to or during the Transition
20 Period.¹⁰² The remainder of customers were transitioned in accordance with the
21 Settlement Agreement to the rate most like the plan the customer had already selected.

22 In addition to the personalized best rate letter, APS used multiple channels and
23 touchpoints to communicate with customers about the New Rates, as well as provide
24 information about the new on-peak period and energy saving tips and strategies. APS

25
26 ¹⁰¹ Tr. Vol. IV (Sept. 28, 2018) at 646-49 (admitting APS-13).

27 ¹⁰² See Response to Commissioner Dunn filed simultaneously herewith. See also
28 Tr. Vol. IV (Sept. 28, 2018) at 646.

1 used multiple on-bill messages and bills inserts, aps.com pages, email, radio
2 advertisements, and community outreach. APS also continues to offer a rate calculator
3 that allows customers to check how its current rate plan compares to any of the other
4 plans for which the customer is eligible.¹⁰³

5 To date, APS has spent approximately \$5 million on the outreach and education
6 efforts described above. APS continues to provide ongoing education to its customers
7 through normal channels such as the customer care center, aps.com, and its Demand
8 Side Management Programs,¹⁰⁴ among other things. Neither Ms. Champion, nor Mr.
9 Gayer have offered any evidence in opposition to APS's education and outreach efforts,
10 and Mr. Woodward merely opines that customers do not require education.¹⁰⁵

11 **V. THE COMMISSION SHOULD DENY AND DISMISS MS. CHAMPION'S**
12 **COMPLAINT UNDER A.R.S. § 40-246.**

13 At the hearing's conclusion, the ALJ asked the parties to brief the issue of what
14 remedies are legally available to Ms. Champion, if she were to prevail on her complaint:

15 What remedies you are seeking or you think are
16 appropriate;

17 What the Commission must find for, you know, for
18 your proposed remedy; . . .

19 Part of the remedies, if you are suggesting that the
20 Commission needs to adjust rates or rate design, maybe this
21 goes without saying, do we need a new rate case, is that the
22 remedy, or can the Commission go back and reopen, I know
23 APS is going to say you can't, but reopen under 40-252, or
24 any other mechanism that you know of that I am not thinking
25 of right now, can it be a partial, for reopening anything, can

26 ¹⁰³ See Response to Commissioner Dunn filed simultaneously herewith.

27 ¹⁰⁴ See generally Decision.

28 ¹⁰⁵ Response, Warren Woodward (Oct. 9, 2018) at 4.

1 it be partial, you know, focus on the residential rate design or
2 whether it needs to be a complete reopening;.....¹⁰⁶

3 The ALJ also asked the parties to provide “specific recommendations for future rate
4 cases,” with a focus on ways “to improve the process” for communicating rate changes
5 to the public.¹⁰⁷

6 Given the evidence presented at hearing, as well as the arguments and authorities
7 raised in this Brief, the Commission should dismiss Ms. Champion’s complaint with
8 prejudice. Ms. Champion failed to provide sufficient evidence to support her claims,
9 under any standard of proof. Notwithstanding the foregoing, APS has addressed the
10 ALJ’s request for a discussion of remedies and other recommendations as set forth
11 below.

12 **A. Ms. Champion May Not Obtain A Rehearing Of APS’s 2016 Rate
13 Case Under A.R.S. § 40-246.**

14 As previously discussed, it is important to note the precise nature of Ms.
15 Champion’s complaint. In providing a more definite statement of her claims, Ms.
16 Champion explained that she was challenging the reasonableness of APS’s rates, as
17 established in the Decision.¹⁰⁸ Ms. Champion specified that:

- 18 • Pursuant to A.R.S. § 40-246(A), Ms. Champion, as a
19 customer of APS, has filed a complaint as to the
20 “reasonableness of any rates and charges” of APS, a
21 public service corporation. These rates and charges were
22 established by Decision No. 76295.¹⁰⁹
- 23 • The relief requested by Ms. Champion in her Complaint
24 and in her Request is a complete rehearing of APS’ last

25 ¹⁰⁶ Tr. Vol. V (Oct. 1, 2018) at 954-55.

26 ¹⁰⁷ Tr. Vol. V (Oct. 1, 2018) at 955.

27 ¹⁰⁸ Response to Motion/Reply to Response to Motion, Stacey Champion (Feb. 13,
28 2018) at 2, 4. The ALJ subsequently ruled that Champion’s more definitive statement
29 be treated as her complaint. Tr. Procedural Conference (Feb. 15, 2018) at 15-16.

30 ¹⁰⁹ Response to Motion/Reply to Response to Motion, Stacey Champion (Feb. 13,
31 2018) at 2.

1 rate case, which approved the Settlement Agreement and
2 the new rates.¹¹⁰

3 Notably, Ms. Champion's substantive filings with the Commission to date cite solely to
4 A.R.S. § 40-246(A) as the statute under which her complaint has been brought.¹¹¹
5 Accordingly, Ms. Champion's "remedies" should be limited to those lawfully permitted
6 under that statute.¹¹²

7 As a matter of law, and as previously briefed by APS in this docket,¹¹³ Ms.
8 Champion may not obtain a rehearing of the Decision under A.R.S. § 40-246. Arizona
9 law prohibits such a collateral attack on a final Commission decision, including a
10 challenge by a non-party to a Commission decision when the non-party did not
11 participate in the underlying docket.

12 Parties to an administrative proceeding may seek judicial
13 review on significantly broader grounds than litigants who
14 collaterally attack a final decision. An aggrieved party to the
15 underlying Commission proceedings, for example, might
16 argue on appeal that the Commission's decisions were not
17 supported by substantial evidence, were arbitrary and
18 capricious, or were legally erroneous. In a collateral attack,
19 though, the challengers may question only the Commission's
20 jurisdiction.¹¹⁴

21 ¹¹⁰ Response to Motion/Reply to Response to Motion, Stacey Champion (Feb. 13,
22 2018) at 3.

23 ¹¹¹ See generally Application-Formal Complaint, Stacey Champion (Jan. 3, 2018);
24 Motion/Request – Miscellaneous, Stacey Champion (Jan. 29, 2018); Response to
25 Motion/Reply to Response to Motion, Stacey Champion (Feb. 13, 2018); Response,
26 Stacey Champion (Mar. 21, 2018). See also Tr. (Feb. 26, 2018) at 18.

27 ¹¹² Cf. *Donaghey v. Attorney Gen.*, 120 Ariz. 93, 95 (1978).

28 ¹¹³ See generally Response, Arizona Public Service Company (Sept. 25, 2018)
(responding to September 21 and September 24 letters filed by Commissioners Tobin
and Burns, respectively).

¹¹⁴ *Miller v. Ariz. Corp. Comm'n*, 227 Ariz. 21, 24, ¶ 10 (App. 2010).

1 Ms. Champion may only assert that the Commission was without jurisdiction to enter
2 the Decision, which she has not done.¹¹⁵ The Commission clearly has jurisdiction over
3 APS's 2016 Rate Case.¹¹⁶

4 Although A.R.S. § 40-246 does not identify any specific remedy, the Arizona
5 Attorney General and Arizona jurisprudence have clarified that a complainant (like Ms.
6 Champion), who challenges the reasonableness of final, existing rates, may only obtain
7 an order requiring the subject utility to file a new "full-scale rate hearing."¹¹⁷

8 A full-scale rate hearing can only mean the hearing conducted to decide a rate
9 application filed under A.A.C. R14-2-103. It is not a "rehearing" under A.R.S. § 40-
10 253. A "rehearing," by definition, permits the Commission to review **part** of a final
11 Commission decision, and thus need not be "full-scale."¹¹⁸ Only a party to the rate case
12 in which the Commission renders its decision can seek rehearing, and must do so within
13 20 days of that decision.¹¹⁹ "No claim arising from any order or decision of the
14 [C]ommission shall accrue in any court to any party" without a timely application for
15 rehearing.¹²⁰ Here, Ms. Champion was not a party in APS's 2016 Rate Case (Docket
16 Nos. E-01345A-16-0036 and E-01345A-16-0123) and did not file her complaint within
17 20 days of the Decision.

18
19
20 ¹¹⁵ A.R.S. § 40-246 also permits a complaint predicated on allegations that a public
21 service corporation has violated a law or Commission decision. Such a violation may
22 give rise to other remedies or penalties. Ms. Champion, however, has conceded that her
23 complaint does not invoke this portion of the statute. *See generally* Response to
24 Motion/Reply to Response to Motion, Stacey Champion (Feb. 13, 2018); Response,
25 Stacey Champion (Mar. 21, 2018).

26 ¹¹⁶ Ariz. Const. art. XV, §§ 2, 3.

27 ¹¹⁷ Ariz. Op. Att'y Gen. No. 69-6 at 3 (Feb. 5, 1969). *See also* *Scates v. Ariz. Corp.*
28 *Comm'n*, 118 Ariz. 531, 536, n.1 (App. 1978); *Mountain States Tel. & Tel. Co. v. Ariz.*
Corp. Comm'n, 124 Ariz. 433, 436 (App. 1979).

¹¹⁸ A.R.S. § 40-253(E).

¹¹⁹ A.R.S. § 40-253(A).

¹²⁰ A.R.S. § 40-253(B).

1 In *Scates v. Arizona Corporation Commission*, the Court of Appeals confirmed
2 that the only rate-related remedy available to customer under A.R.S. § 40-246 is a
3 comprehensive, unlimited rate case. The Court rejected the use of “restricted
4 procedures” to examine and address rate-related issues as violating the Arizona
5 Constitution,¹²¹ and extended this holding rate hearings arising out of A.R.S. § 40-246:

6 A.R.S. §§ 40-246 and 249 authorize proceedings known as
7 “complaint proceedings” with respect to rates. An opinion
8 of the Arizona Attorney General suggests that if a complaint
9 proceeding is instituted and the Commission determines that
10 a hearing with respect to a rate change is warranted, then
restricted procedures such as those followed by the
Commission in this case would be inappropriate.¹²²

11 If A.R.S. § 40-246 permits rehearing, or some other proceeding less than a full-
12 scale rate case, it would have been unnecessary for the *Scates* court to comment on
13 Section 40-246 proceedings. Only a rate case filed under A.A.C. R14-2-103 requires the
14 unrestricted and constitutionally-mandated examination of rates discussed at length in
15 *Scates*.

16 Moreover, rate cases cannot simply be reopened in collateral proceedings. When
17 the Commission approves a rate, and that rate becomes final, it “may not later on its own
18 initiative or as the result of collateral attack make a retroactive determination of a
19 different rate and require reparations.”¹²³

20 The alternative is untenable. If any 25 consumers were allowed to seek rehearing
21 of any rate case, at any time, the floodgates of litigation would open. People dissatisfied
22 with a rate decision could simply file complaints at any time, before or after the A.R.S. §
23 40-253 rehearing deadline. As a result, every ratemaking decision could be litigated

25 ¹²¹ *Scates*, 118 Ariz. at 533-34.

26 ¹²² *Scates*, 118 at 536, n.1.

27 ¹²³ *Mountain States*, 124 Ariz. at 436.

1 twice or more. Complainants could avoid appellate review under A.R.S. § 40-254.01
2 altogether. Such a result should not be sanctioned.¹²⁴ Commission proceedings would
3 become chaotic, rate cases and their resulting decisions meaningless, and Commission
4 resources drained.

5 No statutory language supports a contrary outcome. Nothing in A.R.S. § 40-246
6 suggests that the Legislature intended the statute to be used as a means of circumventing
7 the strict rehearing and appeal requirements for rate cases established in A.R.S. §§ 40-
8 253 and 254.01. Indeed, if individuals or entities may challenge a final rate case
9 decision under A.R.S. § 40-246, there would be little need for them to participate in the
10 rate case itself. Ms. Champion herself confirms the same. She chose not to intervene or
11 otherwise participate in APS's Rate Case. Had she done so, Ms. Champion would have
12 been entitled to seek rehearing and appeal her dissatisfaction with the Commission-
13 adopted rates. Instead Ms. Champion waited several months, and then filed her
14 complaint. The remedies available to Ms. Champion under A.R.S. § 40-246 are
15 prospective only, and include up to the filing of a new rate case, assuming she has
16 established a sufficient evidentiary basis to support same (which she has not).

17 **B. Messrs. Gayer and Woodward Are Equally Barred from Their**
18 **Collateral Attacks on the Decision.**

19 Both Mr. Gayer and Mr. Woodward intervened and actively participated in
20 APS's 2016 Rate Case. Mr. Gayer chose not to file an application for rehearing.
21 Woodward sought rehearing and then appealed the Decision under A.R.S. § 40-254.01.
22 Woodward's appeal is currently at issue before the Arizona Court of Appeals in 1 CA-
23 CC 17-0003 and -0004 (consolidated). In his appellate briefing, Woodward has
24 challenged and sought the elimination of the significant portions of rate design under the
25 Decision (Section V.c.ii.10) as "unlawful, unreasonable, and unsupported by substantial
26

27 ¹²⁴ See discussion at Section II *supra*.
28

1 evidence.”¹²⁵ At the Champion hearing, Woodward confirmed that “I disagree with the
2 Burns letter’s attempt, excuse me, to separate the settlement agreement from this
3 complaint case. Ultimately the settlement agreement is the problem.”¹²⁶

4 As previously noted (*see* Section III.F *supra*), neither Mr. Gayer’s nor Mr.
5 Woodward’s collateral attack on the Decision is permitted under Arizona law. Both
6 intervenors had an opportunity to appeal the Decision, and Mr. Woodward has, in fact,
7 done so. Mr. Gayer may not cure his failure to appeal the Decision here. Similarly, Mr.
8 Woodward’s attempt to effectively amend his appeal in this proceeding is without merit.
9 In fact, Messrs. Gayer and Woodward themselves are evidence that individuals will
10 wrongly assert both Sections 246 and 252 improperly to avoid the rehearing and appeal
11 requirements of A.R.S. §§ 40-253 and 254.01.

12 **C. Ms. Champion Is Not Entitled to Relief under A.R.S. § 40-252.**

13 The ALJ also referenced A.R.S. § 40-252 when asking the parties to address
14 other possible mechanisms the Commission might employ.¹²⁷ A.R.S. § 40-252
15 provides:

16 The commission may at any time, upon notice to the
17 corporation affected, and after opportunity to be heard as
18 upon a complaint, rescind, alter or amend any order or
19 decision made by it. When the order making such
20 rescission, alteration or amendment is served upon the
21 corporation affected, it is effective as an original order or
decision. In all collateral actions or proceedings, the orders
and decisions of the commission which have become final
shall be conclusive.

22 ¹²⁵ *See, e.g.*, Tr. Vol. III (Sept. 27, 2018) at 425 (admitting Woodward-6);
23 Woodward-6 at 10-16, 57. In his reply brief, Woodward also argued that the rate design
24 adopted in the Decision violated Article 15, Section 12 of the Arizona Constitution. *See,*
25 *e.g.*, Appellant’s Reply Brief, *Woodward v. Ariz. Corp. Comm’n, et al.*, 1 CA-CC 17-
0003 & 1 CA-CC 17-0004 (consolidated) (July 16, 2018) at 11-13. Woodward’s briefs
are matters of public record and subject to judicial notice. *See Wallace v. Shields*, 175
Ariz. 166, 172 n.2 (App. 1992).

26 ¹²⁶ Tr. Vol. I (Sept. 25, 2018) at 62.

27 ¹²⁷ Tr. Vol. V (Oct. 1, 2018) at 955.

1 Ms. Champion's filings in this docket have never invoked this statute.¹²⁸ And
2 although Ms. Champion's counsel mentioned A.R.S. § 40-252, for the first time, in his
3 opening statement at hearing, counsel's argument did not amend Ms. Champion's
4 complaint,¹²⁹ and cannot "transform" this docket into a Section 252 proceeding.¹³⁰

5 The statute's plan language authorizes the Commission, and the Commission
6 alone, to use this "mechanism" (*i.e.*, to commence a Section 252 proceeding).
7 Presumably, a person could request that the Commission take action under A.R.S. § 40-
8 252. But proper notice was not provided for such action. And, in any event, the
9 Commission should not do so. Reopening any part of APS's last rate case would
10 jeopardize the delicate balance underlying the Settlement Agreement approved in the
11 Decision. Moreover, neither the law nor the evidence presented support the application
12 of A.R.S. § 40-252 in this matter.

13 1. Proper Notice and a Meaningful Opportunity To Be Heard Was Not
14 Given under A.R.S. § 40-252.

15 First, the Commission cannot rescind, amend or modify any final Commission
16 order without following the procedure delineated in Section 252, including prior notice
17 to the affected corporation and the opportunity to be heard and present evidence.¹³¹ To
18 date, the Commission has not given any notice to APS and other affected parties to the
19 Rate Case under Section 40-252, identifying any issues arising from the Decision that
20 would merit its rescission, amendment or modification. The ALJ made clear in her letter

21 ¹²⁸ See generally Application-Formal Complaint, Stacey Champion (Jan. 3, 2018);
22 Motion/Request – Miscellaneous, Stacey Champion (Jan. 29, 2018); Response to
23 Motion/Reply to Response to Motion, Stacey Champion (Feb. 13, 2018); Response,
Stacey Champion (Mar. 21, 2018). See also Tr. (Feb. 26, 2018) at 18.

24 ¹²⁹ Cf. *In re The Home Depot, Inc. S'holder Derivative Litig.*, 223 F.Supp.3d 1317,
1328 (N.D. Ga. 2016), appeal dismissed sub nom. *Bennek v. Ackerman*, 2017 WL
6759075 (11th Cir. Oct. 24, 2017).

25 ¹³⁰ See *James P. Paul Water Co. v. Ariz. Corp. Comm'n*, 137 Ariz. 426, 430 (1983)
26 (vacating a Commission amendment to a certificate of convenience and necessity
originally issued under the Commission's Section 40-252 authority).

27 ¹³¹ *James P. Paul Water Co.*, 137 Ariz. at 430.

1 dated January 5, 2018, that Ms. Champion's filing did not constitute an application for
2 rehearing, but was instead a customer complaint. And because Ms. Champion's filed
3 documents invoked A.R.S. § 40-246 alone, the only outcomes of which APS could have
4 had notice are those that can be ordered under Section 246. Counsel's brief reference to
5 Section 40-252 on the first day of hearing, after (i) the close of discovery, (ii) the filing
6 of all testimony, and (iii) APS had developed its trial strategy, cannot serve as notice.

7 In addition, APS is not the only party in Docket Nos. E-01345A-16-0036 and E-
8 01345A-16-0123 affected by the Decision. There were 28 other parties to the
9 Settlement who presented evidence in support of the Settlement Agreement. There is
10 little doubt their interests will be affected by any Commission action taken under A.R.S.
11 § 40-252, as evidenced by their agreement to defend the Settlement Agreement and
12 other provisions.¹³² True, notice of Ms. Champion's claims was given in Docket Nos.
13 E-01345A-16-0036 and E-01345A-16-0123; however, that notice advised the claims
14 would be heard as a complaint under A.R.S. § 40-246, not § 40-252. The parties to the
15 Settlement Agreement must be given adequate notice, sufficient time to prepare a
16 defense, and the opportunity to present evidence to controvert the Commission's
17 preliminary basis for considering a possible rescission, amendment or modification of
18 the Decision.

19 2. The Commission Should Not Consider Ms. Champion's Complaint
20 under A.R.S. § 40-252 given her Arguments and Evidence.

21 Arizona courts have made clear that the exercise of the Commission's authority
22 under A.R.S. § 40-252 requires **due cause** for such action, specifically, an **affirmative**
23 showing that (1) the public interest as a whole would benefit, and (2) changed
24 circumstances or conditions now exist that were not present at the time of the subject
25

26 _____
27 ¹³² Decision at Ex. A ¶¶ 39.5, 40.1, 40.6.
28

1 decision.¹³³ The “public interest” prong of Section 40-252 differs from the public
2 interest considered in the underlying action (here, APS’s Rate Case). The public’s
3 interest in the integrity and finality of Commission decisions is now to be considered,
4 and utilities and customers alike need to act in reliance on final Commission
5 decisions.¹³⁴ As a result, Section 40-252 must be used judiciously and sparingly.

6 a) **Action under Section 252 requires findings of changed**
7 **circumstances and that the action serves the public**
8 **interest.**

9 The Arizona Supreme Court’s discussion in *James P. Paul Water Company v.*
10 *Arizona Corporation Commission* is illustrative. The Commission had granted Paul a
11 CC&N to serve sections of Maricopa County, finding that the grant served the public
12 interest.¹³⁵ After the rehearing deadline had lapsed, Pinnacle petitioned the Commission
13 to reopen the proceedings under Section 40-252, and to modify its prior grant so that
14 Pinnacle could serve portions of Paul’s service territory.¹³⁶ The Commission held a
15 hearing on the matter, and ultimately applied Section 40-252 to modify the decision in
16 favor of Pinnacle.¹³⁷

17 Paul sued to set aside the Commission’s modified decision, and ultimately
18 prevailed before both the Arizona Court of Appeals and Arizona Supreme Court.¹³⁸ In
19 its decision, the Arizona Supreme Court reiterated the well-established rule that Section
20 40-252 does not empower the Commission to delete a portion of a company’s CC&N

21 ¹³³ *Ariz. Corp. Comm’n v. Tucson Ins. and Bonding Agency*, 3 Ariz. App. 458, 463
22 (1966). *See also James P. Paul Water*, 137 Ariz. at 430.

23 ¹³⁴ *James P. Paul Water Co.*, 137 Ariz. at 429 (reopening a final CC&N decision is
24 legally impermissible absent an evidentiary showing that the holder could no longer
supply service at reasonable cost to customers in its certificated area). *See also*
Application of Trico Electric Cooperative, Inc., 92 Ariz. 373, 387 (1962) (same).

25 ¹³⁵ *James P. Paul Water Co.*, 137 Ariz. at 427-28.

26 ¹³⁶ *James P. Paul Water Co.*, 137 Ariz. at 427-28.

27 ¹³⁷ *James P. Paul Water Co.*, 137 Ariz. at 428.

28 ¹³⁸ *James P. Paul Water Co.*, 137 Ariz. at 429.

1 absent an affirmative showing that the public interest would be served by such action.¹³⁹
2 Although the Commission had relied on evidence that Pinnacle would better serve the
3 subject areas at a lower cost to customers than Paul, the Court rejected the
4 Commission's argument and evidence as insufficient to warrant the disruption of the
5 Commission's prior and final decision.¹⁴⁰ The Court reasoned that "the instant case did
6 not involve a request for certification in the first instance. Instead, it concerned a
7 request for a deletion in a certificate issued some seven years earlier."¹⁴¹ In reviewing
8 the public's interest under Section 40-252, the Court found other factors paramount –
9 each predicated on a company's need to be able to rely on the finality of Commission
10 orders.¹⁴² The Court held that the Commission acted "beyond the scope of its authority"
11 when it treated the cost to customers as determinative of the public interest.¹⁴³ "Because
12 there was no evidentiary showing that Paul was unable or unwilling to provide service at
13 reasonable [but higher] rates the Commission was without legal authority to amend
14 Paul's certificate as it did."¹⁴⁴

15 The underlying principles expressed in *James P. Paul Water* are clear and equally
16 applicable in this proceeding, namely that the public interest is best served through
17 decisional finality, and the Commission cannot reopen a proceeding and modify a final
18 order without affirmatively demonstrating that conditions have changed and are
19 sufficiently important to trump that public need. This view accords requisite finality to
20 orders of the Commission, while still affording the Commission ample authority to act in
21 the public interest.

22

23 ¹³⁹ *James P. Paul Water Co.*, 137 Ariz. at 429.

24 ¹⁴⁰ *James P. Paul Water Co.*, 137 Ariz. at 430-31.

25 ¹⁴¹ *James P. Paul Water Co.*, 137 Ariz. at 430.

26 ¹⁴² *James P. Paul Water Co.*, 137 Ariz. at 429-30.

27 ¹⁴³ *James P. Paul Water Co.*, 137 Ariz. at 431.

28 ¹⁴⁴ *James P. Paul Water Co.*, 137 Ariz. at 431.

1 Similar constraints have been placed on public utility commissions in other
2 jurisdictions with similar statutes.¹⁴⁵ Such limitations on a utility commission's ability
3 to reopen proceedings and change final decisions are founded on fundamental precepts
4 of sound regulatory policy. In a cost of service regulated system, a public service
5 corporation must comply with all Commission orders and regulations that are
6 promulgated in the public interest.¹⁴⁶ A regulatory regime that requires compliance with
7 Commission orders but that deprives a corporation from the benefit of being able to rely
8 on the reasonable finality of those orders would render regulated corporations
9 functionally paralyzed. Policy issues or changes do not provide grounds for the
10 reopening of final orders.

11 **b) Ms. Champion did not present evidence sufficient to**
12 **support action under A.R.S. § 40-252.**

13 In this case, there is no evidentiary basis for any action under A.R.S. § 40-252.
14 Ms. Champion's "evidence" does not demonstrate changed circumstances or conditions.
15

16
17 ¹⁴⁵ See, e.g., *Brink's, Inc. v. Pennsylvania Pub. Util. Comm'n*, 328 A.2d 582, 584
18 (Pa. Comwlth. Ct. 1974) (holding that "[t]he proper function of a [petition to modify a
19 final order] is to allow P.U.C. to reconsider a previous order in the light of **newly**
20 **discovered evidence or a change in circumstances**" and that the Commission
21 rightfully refused to reopen a final decision absent "the presence of new evidence or of a
22 change in circumstances which would justify modification.") (emphasis added); *State ex*
23 *rel. Utilities Commission v. North Carolina Gas Serv.*, 494 S.E.2d 621, 625 (N.C. App.
24 1998) (holding, under a statute that permits the public utility commission to at any time
25 "upon notice" to the public utility and to the other parties of record affected, and "after
26 giving [them] an opportunity to be heard. . . the Commission may rescind, alter or
27 amend any order or decision made by it.... The rescission must be **made only due to a**
28 **change of circumstances requiring it for the public interest,**" and that "[i]n the
absence of any additional evidence or a change in conditions, the Commission has no
power to reopen a proceeding and modify or set aside an order made by it.") (emphasis
added); *West Texas Utilities Co. v. Office of Public Utility Counsel*, 896 S.W.2d 261,
269 (Tex. App. 1995) (providing that a public utility commission statute vests the
commission with continuing power to regulate, but holding that the "well-recognized
regulatory concept of 'changed circumstances' [requires that] **[a]bsent a showing of**
changed circumstances, the Commission is generally prohibited from revisiting its
prior final orders.") (emphasis added).

¹⁴⁶ *James P. Paul Water Co.*, 137 Ariz. at 429-30.

1 Rather, it simply confirms that the Settlement Agreement as approved in the Decision
2 was implemented correctly. For example:

- 3 • Ms. Champion's expert confirmed the revenue
4 requirement established in the Decision, and presented no
credible evidence of any overearning, just speculation.¹⁴⁷
- 5 • Ms. Champion's expert further confirmed the 15.9%
6 impact prior to the adjustor sweep.¹⁴⁸
- 7 • Ms. Champion's expert could not rebut that the adjustor
8 sweep required by the Settlement Agreement had
9 occurred correctly and was revenue neutral, except to
question the timing of one adjustor sweep that took place
in accordance with its Plans of Administration.¹⁴⁹
- 10 • Ms. Champion's expert included ongoing adjustor
11 increases (but not decreases) that occurred outside the
rate case and Settlement Agreement in his analysis.¹⁵⁰
- 12 • Ms. Champion's expert provided no evidence to rebut
13 APS's customer education efforts, which were
14 substantial, are ongoing, and considered by APS's
15 independent expert to be more than he had ever seen
done in other states for rate changes.¹⁵¹

17 ¹⁴⁷ See, e.g., Tr. Vol. I (Sept. 25, 2018) at 156-57; see also Pre-filed Testimony,
18 Stacey Champion (July 31, 2018), Direct Testimony of Abhay Padgaonkar at 20. See
19 also Section III *supra* for a comprehensive discussion of Ms. Champion's insufficient
evidence.

20 ¹⁴⁸ See, e.g., Pre-filed Testimony, Stacey Champion (July 31, 2018), Direct
21 Testimony of Abhay Padgaonkar at 20; Tr. Vol. I (Sept. 25, 2018) at 162. See also
Section III *supra* for a comprehensive discussion of Ms. Champion's insufficient
evidence.

22 ¹⁴⁹ The LFCR adjustor was swept not on the day of the Decision, but at the time and
23 in the manner required under its respective Plan of Administration. See Pre-filed
24 Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal Testimony of
Charles Miessner at 9-14; Tr. Vol. III (Sept. 27, 2018) at 615-16. Adjustor sweeps do
25 not constitute "changed circumstances," but were anticipated by the Settling Parties and
consistent with the format in which rate case data is presented. See, e.g., Tr. Vol. III
(Sept. 27, 2018) at 490.

26 ¹⁵⁰ See, e.g., Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018),
Rebuttal Testimony of Charles Miessner at 12-13.

27 ¹⁵¹ See, e.g., Tr. Vol. II (Sept. 26, 2018) at 332-33.

- Ms. Champion never disputed that the rates ordered by the Decision were based on a cost-of-service study, and accurately reflected a level of cost allocation that the Settling Parties and Commission deemed appropriate.¹⁵²
- Ms. Champion presented no direct or rebuttal testimony herself on any subject even though she is the Complainant in this matter.

Apparently, Ms. Champion disagrees with the Decision simply because she believes APS's rates to be too high. Her belief is faulty, based on data for only four months of New Rates and her improper inclusion of adjustors (because they are revenue neutral),¹⁵³ and does not demonstrate circumstances not anticipated by the Settlement Agreement and the Decision. She ignores that, in Arizona, rate cases are conducted based on a historical test year, and that the "impact" on rates is an average for that test year excluding adjustors.¹⁵⁴ The law and regulations governing Arizona rate cases do not use a forward test year or revenue decoupling in setting a revenue requirement.¹⁵⁵ Utility forecasts can only ever be predictions; they do not reflect actual conditions and cannot justify changing rates retroactively.¹⁵⁶

Ms. Champion appears to simply not like that the approved rates were designed (1) to move customers closer towards cost-based rates, mitigating subsidies between customers, (2) to effectuate energy efficiency and send better price signals to customers, and (3) to emphasize the importance of individual customer choice. She ignores

¹⁵² See, e.g., Decision at 21, n.104; *id.* at 35, n.180; *id.* at 44; *id.* at 62.

¹⁵³ See Section III *supra* for a comprehensive discussion of Ms. Champion's insufficient evidence.

¹⁵⁴ See Tr. Vol. V at 752-54.

¹⁵⁵ See, e.g., *Litchfield Park Service Co. v. Ariz. Corp. Comm'n*, 178 Ariz. 431, 437 (App. 1993); A.A.C. R14-2-103(A)(3)(p).

¹⁵⁶ See, e.g., Tr. Vol. II (Sept. 26, 2018) at 355-56.

1 evidence that the modernization of APS's rates would take time to achieve the desired
2 migration of customers to their best rates.¹⁵⁷

3 Ms. Champion further complains about a small percentage of individual
4 customers who, on paper, averaged substantially more than a 4.54% increase, assuming
5 2015 energy usage.¹⁵⁸ But Ms. Champion's averaging was without regard to customer
6 choice and **actual** behavior, which could substantially mitigate, if not eliminate, the
7 increase shown on paper—customer choice and behavioral changes that APS has been
8 and continues to promote heavily.¹⁵⁹ The Commission and the Settling Parties always
9 understood there would be customer outliers above and below the average, but agreed
10 not to force customers onto their best rates when balancing competing public interests.¹⁶⁰
11 Instead, the parties opted to fund customer education and outreach to encourage
12 thoughtful customer decisions regarding rates and energy use management.

13 Ms. Champion's "rate shock" argument, asserted the last day of hearing, is
14 telling. "Gradualism" is a principle of rate design that rate increases should occur
15 gradually over the course of several rate cases to achieve cost of service parity.
16 Gradualism deviates from designing rates on a strict cost of service basis so that
17 customers, as a whole, are not "shocked" by a single dramatic increase.¹⁶¹ As a result,

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19 ¹⁵⁷ See, e.g., Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018),
20 Rebuttal Testimony of Jessica Hobbick at 2; Pre-filed Testimony, Arizona Public
21 Service Company (Aug. 17, 2018), Rebuttal Testimony of Dr. Ahmad Faruqui at 7; Tr.
22 Vol. V (Oct. 1, 2018) at 840-41.

23 ¹⁵⁸ See, e.g., Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018),
24 Rebuttal Testimony of Jessica Hobbick at 3; Pre-filed Testimony, Arizona Public
25 Service Company (Aug. 17, 2018), Rebuttal Testimony of Charles Miessner at 2, 9-10;
26 Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018), Rebuttal
27 Testimony of Dr. Ahmad Faruqui at 4-7.

28 ¹⁵⁹ See, e.g., Pre-filed Testimony, Arizona Public Service Company (Aug. 17, 2018),
Rebuttal Testimony of Dr. Ahmad Faruqui at 6-8; Tr. Vol. IV (Sept. 28, 2018) at 678.
See also Tr. Vol. IV (Sept. 28, 2018) at 654 (admitting Ex. APS-14 & Ex. APS-15).

¹⁶⁰ See, e.g., Decision at 53-55.

¹⁶¹ See *Freeport Minerals Corp. v. Ariz. Corp. Comm'n*, 244 Ariz. 409, 414-15, ¶ 20
(App. 2018).

1 certain customers subsidize others for a period of time until parity is achieved.¹⁶² The
2 Commission has been moving gradually, over many years, to eliminate longstanding
3 interclass subsidies, recently indicating that rate parity may be reached for some utilities
4 in one or two rate cases.¹⁶³ At its core, Ms. Champion's complaint hinges on her
5 dissatisfaction with the Commission's policy to achieve rate parity through the
6 integration of cost-based rates and plans that address energy usage and efficiency. A
7 customer's dislike of an administrative policy decision is not sufficient to show changed
8 circumstances under Section 252, and is not a legitimate basis to rescind or alter the
9 Decision.

10 3. The Benefits, Including Rates, Provided under the Decision Are
11 Reasonable and Serve the Public Interest.

12 Rescission or modification of the Decision does not serve the public interest.
13 APS's Rate Case resulted in tremendous public benefits. The Settling Parties were
14 comprised of individuals and entities with vastly different interests.¹⁶⁴ Residential
15 customers, and particularly those with low-incomes, were represented by the Residential
16 Utility Consumer Office and Arizona Community Action Association.¹⁶⁵ Residential
17 rates and modern rate design were the focus of APS's Rate Case, and the basis for a
18 historic Settlement Agreement between a utility and the solar rooftop industry.¹⁶⁶ Other
19 public benefits of the Settlement Agreement included, but were not limited to:

- 20 • APS's agreements to not file a new general rate case
21 filing before June 1, 2019;

22
23
24 ¹⁶² See, e.g., *Freeport Minerals*, 244 Ariz. at 413-14, ¶¶ 17-18; *id.* at 414-15, ¶ 20;
id. at 416, ¶ 25.

25 ¹⁶³ *Freeport Minerals*, 244 Ariz. at 413, ¶ 15.

26 ¹⁶⁴ See, e.g., Decision at 7, 60.

27 ¹⁶⁵ See, e.g., Decision at 17-18, 23-24.

28 ¹⁶⁶ See, e.g., Decision at 25-27, 32-35.

- A program to expand access to utility-owned rooftop solar for low and moderate income Arizonans, Title I Schools, and rural governments;
- Continuation of a buy-through rate for Industrial and large General Service customers;
- A refund to customers through the Demand Side Management Adjustor Clause (DSMAC), of \$15 million in collected, but unspent DSMAC funds to mitigate the first year bill impacts;
- Continuation of crisis bill assistance for low-income customers;
- More off-peak hours and holidays for time-differentiated rates;
- An experimental pilot technology rate initially available for up to 10,000 customers;
- New updated rate designs with rate options for all customers;
- An educational plan and concerted outreach effort by APS on its various rate plans with transitional rates in place until May 1, 2018 to allow for customer education;
- A rate adjustment mechanism to enable the pass-through of income tax effects to customers;
- Additional discounts for Schools and Military Customers; and
- Resolution of Solar Distributed Generation (DG) issues for the term of the Settlement Agreement.¹⁶⁷

Rescission of or changes to the Decision would void the Settlement Agreement, unwind the delicate balance reached by the Settling Parties, and terminate those benefits.¹⁶⁸ And rescission would not achieve the outcome apparently sought by Ms. Champion as it would involve a new rate case, which, as previously discussed, cannot be retroactive in its effect.

¹⁶⁷ Decision at 23, 25-27, 33-34, 41-45, 50-53, 57, 60, and Ex. A, ¶ 1.5 (identifying these and other benefits).

¹⁶⁸ See, e.g., Decision at Ex. A ¶ 39.5.

Neither can the Commission isolate residential rates without impacting other key provisions of the Settlement. The rates approved by the Decision resulted from a cost-of-service study, and involved setting rate amounts by allocating cost responsibility. Any change to residential rates will have a ripple effect on other APS customers, including a reallocation of the revenue requirement to other residential customers, or even non-residential customers. Notably, the revenue requirement established in the Decision has never been appealed,¹⁶⁹ and remains uncontested in this proceeding.¹⁷⁰

Moreover, the Settlement Agreement was a package. That package presented a landscape of risks and benefits that, when taken as a whole, APS and the other Settling Parties were willing to accept. Modifying one aspect of the Settlement Agreement risks each Settling Party's decision calculus, and the agreed-upon rate decision was the focus of and foundational to the Settlement Agreement as a whole.¹⁷¹ APS will therefore oppose any targeted amendment to the rate decision adopted in the Decision.

VI. APPROPRIATE REMEDIES

Complainants have the burden of demonstrating that they have suffered some sort of harm, and that because they suffered this harm, they are entitled to certain remedies.

¹⁶⁹ The Commission expressly found that: "While some parties contest the way the revenue requirement would be collected from customers, no party to this proceeding contests the revenue requirement. Many of the Settling Parties completed a thorough analysis of APS's rate case filing prior to the time the parties began settlement negotiations." Decision at 21.

¹⁷⁰ Champion's expert witness confirmed the revenue requirement, and provided no evidence that APS was overearning except to disagree with the timing of certain adjusters. Tr. Vol. II (Sept. 26, 2018) at 298-301. He did not refute that the adjusters were revenue neutral. Pre-filed Testimony, Stacey Champion. Rebuttal Testimony of Abhay Padgaonkar (Aug. 17, 2018) at 4. Ms. Champion's counsel attempted to use APS's quarterly filings with the Securities and Exchange Commission (Form 10-K and Form 10-Q) as evidence of overearning; however, these filings reflect gross revenues that include much more than base rate revenues. Tr. Vol. V (Oct. 1, 2018) at 797-800, 839-40.

¹⁷¹ See generally Decision; see also Tr. Vol. IV (Sept. 28, 2018) at 759.

1 Here, however, Ms. Champion and the other intervenors have made no such
2 demonstration.

3 **A. Complainants Have Failed To Make Any Showing That Would Justify**
4 **the Remedies They Seek.**

5 Ms. Champion, Mr. Gayer, and Mr. Woodward have not demonstrated that APS
6 caused them injury or damage.¹⁷² In fact, as previously mentioned, Ms. Champion failed
7 to testify at all in her own complaint proceeding. The unrefuted evidence presented by
8 APS shows that Ms. Champion elected to stay on a rate plan—that based on her
9 historical usage—would be more expensive than alternative plans.¹⁷³ If she had, her
10 bills would be close to the 4.54% average.¹⁷⁴ Similarly, Mr. Gayer and Mr. Woodward
11 failed to demonstrate that they were harmed by the Rate Case, and both experienced bill
12 impacts well within the anticipated range.¹⁷⁵

13 Instead, Ms. Champion attempted to show that the bill impact stemming from the
14 Decision exceeded the stated 4.54% average.¹⁷⁶ It is undisputed, however, that this was
15 an annual average bill impact, calculated consistent with the Commission's own
16 standard filing requirements.¹⁷⁷ The majority of APS customers have not had a full year
17 on the New Rates approved in the Decision, and it has only been six months since the
18 transition of New Rates was completed in May 2018.¹⁷⁸

21 ¹⁷² Decision at 104; Settlement Agreement, Section 19.1.

22 ¹⁷³ Tr. Vol. IV (Sept. 28, 2018) at 647; *see also* Exhibit (Oct. 9, 2018) at APS Ex.
23 13.

24 ¹⁷⁴ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct
25 Testimony of Jessica Hobbick at 8.

26 ¹⁷⁵ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct
27 Testimony of Jessica Hobbick at 9.

28 ¹⁷⁶ *See generally* Pre-filed Testimony, Stacey Champion (July 31, 2018).

¹⁷⁷ Tr. Vol. IV (Sept. 28, 2018) at 668; *see also* Tr. Vol. V (Oct. 1, 2018) at 786.

¹⁷⁸ *See* Decision at Ex. A ¶ 26.1.

1 Perhaps more importantly, the 4.54% average was a figure that: (i) was derived
2 from a composite annual class average; (ii) projected but could never guarantee a
3 specific bill impact; (iii) was based on customer usage in 2015; (iv) had an average load
4 factor and the same average split between peak and off-peak usage and summer versus
5 winter usage as in the 2015 Test Year; and (v) was without regard to any change in
6 adjustors occurring after 2015.¹⁷⁹ It would be contrary to all ratemaking principles to
7 find wrongdoing even if customers' actual bill impact in 2017 and 2018 differed from
8 this 4.54% projection.

9 Further, there is no evidence that APS committed any "wrong" here. To the
10 contrary, the evidence demonstrates that APS properly implemented the Decision in
11 accordance with its terms and the terms of the Settlement Agreement.¹⁸⁰ APS also
12 complied with its mandated rate schedules and adjustor POAs as ordered by the
13 Commission in and outside of the Rate Case.¹⁸¹ APS also engaged in unprecedented,
14 massive customer education that began before the Rate Case and continues to this
15 day.¹⁸² Significant monies were earmarked and spent to support residential customers in
16 need.¹⁸³ What was true on the day the Commission approved the Settlement remains
17 true today: APS compromised in its Rate Case, joining with others to balance their

18 ¹⁷⁹ Pre-filed Testimony, Arizona Public Service Company (July 31, 2018), Direct
19 Testimony of Leland Snook at 8.

20 ¹⁸⁰ Staff Report, Utilities Division (Sept. 26, 2018) at Executive Summary; Pre-filed
21 Testimony, Arizona Public Service Company (July 31, 2018), Direct Testimony of
22 Leland Snook at 2-4, 9-10; Pre filed Testimony, Arizona Public Service Company (July
31, 2018), Direct Testimony of Dr. Ahmad Faruqui at 3 & Attachment AJF-2DR at 3-
10; Tr. Vol. II (Sept. 26, 2018) at 339; Tr. Vol. IV (Sept. 29, 2018) at 749-68.

23 ¹⁸¹ See generally Pre-filed Testimony, Arizona Public Service Company (Aug. 17,
2018), Rebuttal Testimony of Charles A. Miessner; Tr. Vol. III (Sept. 27, 2018) at 488-
24 619. See also Staff Report, Utilities Division (Sept. 26, 2018) at 5; see also Tr. Vol IV
(Sept. 28, 2018) at 753-54; see also Tr. Vol V (Oct 1, 2018) at 789-94.

25 ¹⁸² Tr. Vol. IV (Sept. 28, 2018) at 651-53, 678; Tr. Vol. IV (Sept. 28, 2018) at 654
(admitting Ex. APS-14 & Ex. APS-15).

26 ¹⁸³ Tr. Vol. I (Sept. 25 2018) at 70; Tr. Vol. IV (Sept. 28, 2018) at 751-52; Pre-filed
27 Testimony, Arizona Public Service Company (July 31, 2018), Direct Testimony of
28 Leland Snook at 6-7.

1 diverse interests consistent with the Commission's policy of moving Arizona forward in
2 the implementation of cost-based, energy efficient modern rate plans while preserving
3 customer choice.

4 **B. Recommendations For Prospective Action: Continued Customer**
5 **Education And Additional Information Concerning Proposed Rate**
6 **Changes Will Strengthen The Ratemaking Process.**

7 To the extent the Commission believes that continued efforts should be made to
8 improve transparency in the ratemaking process, APS suggests the following.

9 First, along with the H Schedules required in every rate case under A.A.C. R14-
10 2-103, APS proposes that, in the future, utilities could provide a "bin analysis" of base
11 rate bill impacts for residential customers in the format offered by APS witness Jessica
12 Hobbick in this matter.¹⁸⁴ APS's next rate application would include the bin analysis as
13 an exhibit.¹⁸⁵ Utilities also could revise and file such an analysis upon the issuance of a
14 ROO, reflecting the ROO's proposed findings of fact and conclusions of law. Such an
15 analysis would provide a resource for interested members of the public, and summarize
16 the impact at issue in that rate case in an easily understood format. Thus, the
17 Commission and public would have additional information concerning the proposed rate
18 changes throughout those proceedings.

19 The foregoing bin analysis, however, reflects only one aspect of a rate change.
20 Including the chart prepared by APS witness Ms. Hobbick might not address all areas of
21 ambiguity that could arise. Conveying additional information in other ways might
22 improve the rate case process. This proceeding did not include any efforts to catalogue
23 potential solutions to the type and format of information that can or should be submitted

24
25 ¹⁸⁴ JEH-1DR reflects the percentage of impact for customers in 5% bins and the
26 corresponding number of customers within each bin. Pre-Filed Testimony, Arizona
27 Public Service Company (July 31, 2018) at Direct Testimony of Jessica Hobbick,
28 Attachment JEH-1DR.

¹⁸⁵ Staff and other intervenors could provide similar analyses.

1 with rate cases, however, one option would be to focus on communications regarding
2 the impact of base rate increases (or decreases) to residential customers. APS would be
3 willing to meet with stakeholders, including Staff and RUCO, to address how best to
4 communicate the impact of base rate increases (or decreases) to residential customers.

5 In addition, APS and the Settling Parties understood the energy burdens for low-
6 income households in Arizona, as compared to the average APS customer. For this
7 reason, the Settlement Agreement included \$1.25 million annually in crisis bill
8 assistance, and revisions to the bill discount for customers on the E-3 Energy Support
9 Program. APS knows that rate increases are particularly hard on limited income
10 customers and will continue to focus on ensuring this population receives appropriate
11 support. Thus, APS will reexamine its low-income discount program and crisis bill
12 funding in its next rate case.

13 Finally, throughout this proceeding, questions arose about whether customers are
14 on their best rate. The Settlement Agreement included limitations on rate switching to
15 prevent customers from “gaming” their rate selections in a way that took advantage of
16 the seasonality differences between rates. Given the modernization of and the increase
17 in rate plans offered under the Decision, however, additional flexibility regarding rate
18 switching may address customer concerns regarding whether they are on their best rate.
19 Accordingly, as part of the outcome in this proceeding, APS proposes that the
20 Commission allow customers to change plans one additional time. Such flexibility will
21 provide customers another opportunity to migrate to their best rate and permit more time
22 for customers to learn how best to manage their usage on demand and time-of-use plans,
23 while still limiting the possibility of rate selection “gaming.”

24 **VII. CONCLUSION**

25 Given the foregoing, as well as the testimony and evidence presented at hearing,
26 the Commission should dismiss Ms. Champion’s complaint with prejudice.

1 RESPECTFULLY SUBMITTED this 26th day of October 2018.

2
3 By: 

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